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Annotated

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September 2022

2022 Regular Session

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of the Publisher

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1972 ANNOTATED

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2022 LexisNexis

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ANNOTATED

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CHAPTER 1.

GENERAL PROVISIONS

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§ 49-1-29. Powers and duties of commission and executive director.

(1) The commission may promulgate rules and regulations, inaugurate studies and surveys, and establish any services it deems necessary to carry out wildlife laws. A violation of any rules or regulations promulgated by the commission shall constitute a misdemeanor and shall be punished as provided in Section 49-7-101.

(2) The executive director shall have authority with commission approval:

(a) To close or shorten the open season as prescribed by law in cases of urgent emergency on any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians, in any locality, when it finds after investigation and public review that the action is reasonably necessary to secure the perpetuation of any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians and to maintain an adequate supply in

the affected area. The statutes shall continue in full force and effect, except as restricted and limited by the rules and regulations promulgated by the commission.

(b) To designate wildlife refuges, with the consent of the property owner or owners, in any localities it finds necessary to secure perpetuation of any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians and to maintain an adequate supply for the purpose of providing a safe retreat where the animals may rest and replenish adjacent hunting, trapping or fishing grounds or waters, and to approve land suitable for such purposes as eligible for the income tax credit authorized under Section 27-7-22.22.

(c) To acquire and hold for the state by purchase, condemnation, lease, or agreement as authorized from time to time by the Legislature, and to receive by gifts or devise, lands or water suitable for fish habitats, game and bird habitats, state parks, access sites, wildlife refuges, or for public shooting, trapping or fishing grounds or waters, to provide areas on which any citizen may hunt, trap or fish under any special regulations as the commission may prescribe, and to approve lands suitable for such purposes as eligible for the income tax credit authorized under Section 27-7-22.22.

(d) To extend and consolidate lands or waters suitable for the above purposes by exchange of lands or waters under its jurisdiction.

(e) To capture, propagate, transport, sell or exchange any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians needed for stocking or restocking any lands or waters of the state.

(f) To enter into cooperative agreements with persons, firms, corporations or governmental agencies for purposes consistent with this chapter.

(g) To regulate the burning of rubbish, slashings and marshes or other areas it may find reasonably necessary to reduce the danger of destructive fires.

(h) To conduct research in improved wildlife and fisheries conservation methods and to disseminate information to the residents of the state through the schools, public media and other publications.

(i) To have exclusive charge and control of the propagation and distribution of wild birds, animals, reptiles, fish and amphibians, the conduct and control of hatcheries, biological stations and game and fur farms owned or acquired by the state; to expend for the protection, propagation or preservation of game birds, game or fur-bearing animals, reptiles, fish and amphibians all funds of the state acquired for this purpose arising from licenses, gifts or otherwise; and shall have charge of the enforcement of all wildlife laws.

(j) To grant permits and provide regulations for field trials and dog trainers.

(k) To prohibit and to regulate the taking of nongame gross fish, except minnows.

(*l*) To enter into agreements with landowners to trap and purchase quail on the premises of the landowner and to provide for the distribution of quail.

(m) To operate or lease to third persons concessions or other rights or privileges on lakes owned or leased by the department. Owners of land adjoining land owned or leased by the department shall have priority to the concessions or rights or privileges, if the owners meet the qualifications established by the commission.

(n) To implement a beaver control program and to charge fees, upon the recommendation of the Beaver Control Advisory Board, to landowners participating in the beaver control program described in Section 49-7-201.

(o) To apply for, receive and expend any federal, state or local funds, contributions or funds from any other source for the purpose of beaver control or eradication.

(p) To require the department to divide the districts into zones if necessary, and periodically survey the districts or zones to obtain information that is necessary to properly determine the population and allowable harvest limits of wildlife within the district or zone.

(q) To grant wildlife personnel access to enter the enclosure and utilize the best collection methods available to obtain tissue samples for testing where CWD has been diagnosed within five (5) miles of the enclosure.

If CWD is detected within an enclosure, the commission shall not declare surrounding or adjoining properties within a five (5) mile radius of the enclosure, a CWD Management Zone, until chronic wasting disease is positively detected within such radius on these surrounding or adjoining properties.

HISTORY: Codes, 1942, § 5844; Laws, 1932, ch. 123; Laws, 1946, ch. 423, § 3; Laws, 1947, 1st Ex Sess ch. 41; Laws, 1948, ch. 255, § 2; Laws, 1950, ch. 215; Laws, 1954, ch. 175, §§ 1, 2; Laws, 1956, ch. 148; Laws, 1958, ch. 176; Laws, 1962, ch. 181, § 1; Laws, 1966, ch. 261, § 1; Laws, 1970, ch. 279, § 1; Laws, 1973, ch. 378, § 1; Laws, 1988, ch. 435, § 1; Laws, 1989, ch. 377, § 7; Laws, 1989, ch. 402, § 3; Laws, 1989, ch. 544, § 112; Laws, 1996, ch. 486, § 1; Laws, 2003, ch. 516, § 5; Laws, 2010, ch. 503, § 2, eff from and after Jan. 1, 2010; Laws, 2020, ch. 307, § 2, eff from and after July 1, 2020; Laws, 2021, ch. 426, § 2, eff from and after passage (approved April 9, 2021).

Amendment Notes — The 2020 amendment, in (q), deleted "require Chronic Wasting Disease (CWD) testing of white-tailed deer harvested within any enclosure; to" following "To" and inserted "Chronic Wasting Disease (CWD)."

The 2021 amendment, effective April 9, 2021, designated the formerly undesignated first and second paragraphs (1) and (2); in (2)(q), rewrote the first paragraph, which read: "To grant wildlife personnel authority to access the property and depopulate white-tailed deer within an enclosure where Chronic Wasting Disease (CWD) has been diagnosed; and to grant wildlife personnel authority to access the property and utilize lethal collection methods to obtain tissue samples for testing where CWD has been diagnosed within five (5) miles of the enclosure," and added the second paragraph.

Cross References — Chronic Wasting Disease testing of certain white-tailed deer required, see Miss. Code Ann. § 49-7-58.5.

§ 49-1-35. Official magazine of department.

(1) The commission may publish an official magazine concerning the activities of the department and other matters of interest to Mississippi

hunters, fishermen, boaters and other outdoorsmen. The commission may set, charge and collect a fee for subscriptions and make such other rules and regulations as may be necessary for the publishing of such magazine.

(2) For the purposes of this section, the term "publish" includes the publishing and production of the current print version of a magazine, as well as the production and distribution of a digital version of the magazine which shall be available exclusively online and/or in a mobile application.

(3) In order to offset costs related to the print and digital versions of the magazine, and to minimize subscription costs, the Mississippi Department of Wildlife, Fisheries and Parks is authorized to sell advertisements in and on any media falling under its control, including the official magazine, the department's website and any mobile application.

(4) The department may establish a fund to be known as the MS Outdoors Fund. The proceeds from subscriptions and sales of advertisements shall be deposited in such fund. Monies in such fund shall be deposited in an interest-bearing account in an approved state depository. Proceeds from this account, along with the interest earned on the same, for each fiscal year's magazine shall be transferred to the department's operating account to defray the publishing expenses of MS Outdoors, the digital magazine and related expenses.

HISTORY: Codes, 1942, § 5844-05; Laws, 1962, ch. 183; Laws, 1983, ch. 338; Laws, 2000, ch. 516, § 14; Laws, 2016, ch. 370, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment designated the former first and second sentences of the section (1); inserted "set" in the second sentence; deleted the former third sentence, which read: "The subscription rates shall be as follows: for a one-year subscription, not less than Five Dollars ($5.00) nor more than Nine Dollars ($9.00); for a two-year subscription, not less than Nine Dollars and Fifty Cents ($9.50) nor more than Seventeen Dollars and Fifty Cents ($17.50); and for a three-year subscription, not less than Fourteen Dollars and Fifty Cents ($14.50) nor more than Twenty-six Dollars and Fifty Cents ($26.50)"; added (2) and (3); and designated the former last four sentences of the section as (4), and therein inserted "and sales of advertisements" in the second sentence, and in the last sentence, substituted "department's" for "Bureau of Administration's" and inserted "the digital magazine."

CHAPTER 2.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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IN GENERAL

Sec.
49-2-5. Commission on Environmental Quality.

Sec.
49-2-33. DEQ Water, Land and Air Contamination Projects Fund created; funding sources; purpose.

§ 49-2-5. Commission on Environmental Quality.

(1) There is hereby created the Mississippi Commission on Environmental Quality, to be composed of seven (7) persons appointed by the Governor, with the advice and consent of the Senate, for a term of seven (7) years. One (1) person shall be appointed from each congressional district as constituted January 1, 1978, and two (2) members shall be appointed from the state at large. The initial terms of the members from congressional districts shall be for one (1), two (2), three (3), four (4) and five (5) years respectively, and the initial terms of the members from the state at large shall be one (1) for six (6) years and one (1) for seven (7) years. Thereafter, all terms shall be for seven (7) years. The members serving on the predecessor Commission on Natural Resources on June 30, 1989, shall continue to serve as members of the successor Commission on Environmental Quality until the expiration of the term of their appointment to the predecessor commission.

(2) The commission shall elect from its membership a chairman who shall preside over meetings and a vice chairman who shall preside in the absence of the chairman or when the chairman shall be excused.

(3) The commission shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. Each member of the commission shall take the oath prescribed by Section 268 of the Constitution and shall enter into bond in the amount of Thirty Thousand Dollars ($30,000.00) to be approved by the Secretary of State, conditioned according to law and payable to the State of Mississippi before assuming the duties of office. Any member who shall not attend three (3) consecutive regular meetings of the commission shall be subject to removal by a majority vote of the commission members.

(4) The members of the commission shall receive no annual salary, but shall receive per diem compensation as authorized by law for each day devoted to the discharge of official duties, and shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by law.

The commission shall be composed of persons with extensive knowledge of or practical experience in at least one (1) of the matters of jurisdiction of the commission.

(5) The commission is authorized and empowered to use and expend any funds received by it from any source for the purposes of this chapter. Such funds shall be expended in accordance with the statutes governing the expenditure of state funds.

(6) At least a majority of the members of the commission shall represent the public interest and shall not derive any significant portion of their income from persons subject to permits under the federal Clean Air Act or enforcement order under the federal Clean Air Act. In the event of any potential conflict of

interest by a member of the commission, such member shall disclose the potential conflict to the other members of the commission and shall recuse himself or herself from participating in or voting on any matter related to such conflict of interest.

HISTORY: Laws, 1978, ch. 484, § 3; Laws, 1980, ch 560, § 22; Laws, 1989, ch. 544, § 130; Laws, 2016, ch. 341, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (6).

§ 49-2-33. DEQ Water, Land and Air Contamination Projects Fund created; funding sources; purpose.

(1) There is created in the State Treasury a special fund to be designated as the "DEQ Water, Land and Air Contamination Projects Fund," which shall consist of funds transferred from the Attorney General Contingent Fund under the provisions of subsection (2) of this section, any other funds made available by the Legislature in any manner and funds from any other source designated for deposit into the fund. Monies in the fund shall be used by the Mississippi Department of Environmental Quality, upon appropriation by the Legislature, for the purpose of assessment, remediation, operation and maintenance, cost-sharing, oversight and administration of water, land and air contamination projects within the State of Mississippi pursuant to the 2020 settlement in the case of *The State of Mississippi ex rel. Lynn Fitch, Attorney General vs. EnPro, Inc., et.al.;* Cause No. CV-2017-19-JMY2. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund.

(2) During fiscal year 2022, the State Fiscal Officer shall transfer the sum of One Million Dollars ($1,000,000.00) from the Attorney General Contingent Fund to the DEQ Water, Land and Air Contamination Projects Fund created in subsection (1) of this section.

HISTORY: Laws, 2021, ch. 472, § 14, eff from and after passage (approved April 19, 2021).

2022 TATE COUNTY – EROSION CONTROL AND REPAIR FUND

Sec.
49-2-91. 2022 Tate County – Erosion Control and Repair Fund created; use of monies.

§ 49-2-91. 2022 Tate County – Erosion Control and Repair Fund created; use of monies.

(a)(i) A special fund, to be designated as the "2022 Tate County - Erosion Control and Repair Fund," is created within the State Treasury. The fund

shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund.

(ii) Monies deposited into the fund shall be disbursed, in the discretion of the Department of Environmental Quality, to assist Tate County, Mississippi, in paying costs associated with ditch erosion control, repair and rehabilitation along and near the project described in Section 27-104-301(2)(mm), Mississippi Code of 1972, and on property located along and near such project, including, but not limited to, creation of detention areas along ditches, replacement of drainage structures along ditches, rock stabilization at downstream ends of ditches and reestablishing vegetative cover on all disturbed areas.

(b) Amounts deposited into such special fund shall be disbursed to pay the costs of the projects described in paragraph (a) of this section.

HISTORY: Laws, 2022, ch. 510, § 24, eff from and after July 1, 2022.

CERTIFIED ELECTRONIC RECYCLERS

Sec.

49-2-101. Definitions.
49-2-103. Program to encourage certification of electronic recyclers; directory of certified electronic recyclers; compliance; applicability.

§ 49-2-101. Definitions.

As used in Sections 49-2-101 and 49-2-103:

(a) "Electronics" means a personal computer, computer component, audio player, videocassette player, facsimile machine, copy machine, cellular telephone, wireless paging device, or any electronic item containing an intact or broken cathode-ray tube. An electronic item containing a cathode-ray tube includes a television, computer monitor, or any other cathode-ray tube monitor or display device.

(b) "Recycler" means a person who uses, reuses or reclaims obsolete electronic equipment and associated materials.

HISTORY: Laws, 2013, ch. 351, § 1, eff from and after July 1, 2013.

§ 49-2-103. Program to encourage certification of electronic recyclers; directory of certified electronic recyclers; compliance; applicability.

(1) The Department of Environmental Quality shall develop a program to encourage all electronic recyclers to become certified by demonstrating to an accredited, independent third-party auditor that they meet specific standards to safely recycle and manage electronic equipment.

(2) The department shall maintain a directory of recyclers meeting the accredited certification standards of Responsible Recycling Practices (R2) and the e-Stewards Standards and any recyclers who have been certified by an accredited, independent certification auditor listed by the ANSI-ASQ National Accreditation Board (ANAB) as an organization that certifies recyclers to available recycling standards.

(3) State agencies shall use a certified recycler on the directory for the disposal of agency electronics.

(4) The Department of Environmental Quality and state agencies shall comply with this section no later than July 1, 2014.

(5) This section does not apply to the donation of electronics to public schools, state agencies, local governments or nonprofit organizations.

HISTORY: Laws, 2013, ch. 351, § 2, eff from and after July 1, 2013.

MISSISSIPPI MUNICIPALITY AND COUNTY WATER INFRASTRUCTURE (MCWI) GRANT PROGRAM

Sec.

49-2-131. Mississippi Municipality and County Water Infrastructure (MCWI) Grant Program established; matching funds; definitions; certified projects; application; ranking of applications; reports [Repealed effective January 1, 2027; Subsection (16) repealed effective January 1, 2026].

§ 49-2-131. Mississippi Municipality and County Water Infrastructure (MCWI) Grant Program established; matching funds; definitions; certified projects; application; ranking of applications; reports [Repealed effective January 1, 2027; Subsection (16) repealed effective January 1, 2026].

(1) This section shall be known and may be cited as the "Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022."

(2) There is hereby established within the Mississippi Department of Environmental Quality the Mississippi Municipality and County Water Infrastructure (MCWI) Grant Program under which municipalities, counties and certain public utilities not regulated by the Public Service Commission may apply for reimbursable grants to make necessary investments in water, wastewater, and stormwater infrastructure to be funded by the Legislature utilizing Coronavirus State Fiscal Recovery Funds made available under the federal American Rescue Plan Act of 2021 (ARPA). Such grants shall be made available to municipalities and counties to be matched with the Coronavirus Local Fiscal Recovery Funds awarded or to be awarded to them under ARPA on a one-to-one matching basis. Coronavirus Local Fiscal Recovery Funds that a county transfers to a municipality or that a county or municipality transfers to a public utility not regulated by the Public Service Commission are eligible on a one-to-one matching basis. Municipalities that received less than One

Million Dollars ($1,000,000.00) in the total allocation of Coronavirus Local Fiscal Recovery Funds are eligible for a two-to-one match only on the Coronavirus Local Fiscal Recovery Funds awarded or to be awarded to them under ARPA. The total funds provided for all two-to-one matches shall not exceed Fifty Million Dollars ($50,000,000.00). The dollar amount for professional fees that can be allocated as a part of a county's, municipality's or public utility's matching share is not to exceed four percent (4%) of the total project cost.

(3) For purposes of this section, unless the context requires otherwise, the following terms shall have the meanings ascribed herein:

(a) "MCWI Grant Program" means the Mississippi Municipality and County Water Infrastructure Grant Program.

(b) "ARPA" means the federal American Rescue Plan Act of 2021, Public Law 117-2, which amends Title VI of the Social Security Act.

(c) "State Recovery Funds" means Coronavirus State Fiscal Recovery Funds awarded through Section 602 of Title VI of the Social Security Act amended by Section 9901 of the federal American Rescue Plan Act of 2021, Public Law 117-2.

(d) "Local Recovery Funds" means Coronavirus Local Fiscal Recovery Funds awarded through Section 603 of Title VI of the Social Security Act amended by Section 9901 of the federal American Rescue Plan Act of 2021, Public Law 117-2.

(e) "Department" means the Department of Environmental Quality.

(f) "Professional fees" means fees for the services of attorneys and engineering, surveying, and environmental studies.

(g) "Project" means the infrastructure improvements defined in an application that (i) complies with all requirements of ARPA, and (ii) is eligible for a grant award under this section.

(4)(a) On or before July 1, 2022, the Department of Environmental Quality shall promulgate rules and regulations necessary to administer the MCWI Grant Program prescribed under this section, including application procedures and deadlines. The department is exempt from compliance with the Mississippi Administrative Procedures Law in fulfilling the requirements of this section.

(b) The Department of Health shall advise the Mississippi Department of Environmental Quality regarding all such rules and regulations as related to the federal Safe Drinking Water Act.

(5) Funding under the MCWI Grant Program shall be allocated to projects certified by the Mississippi Department of Environmental Quality as eligible for federal funding, including, but not be limited to, the following:

(a) Construction of publicly owned treatment works;

(b) Projects pursuant to the implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA);

(c) Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(d) Management and treatment of stormwater or subsurface drainage water;

(e) Water conservation, efficiency, or reuse measures;

(f) Development and implementation of a conservation and management plan under the CWA;

(g) Watershed projects meeting the criteria set forth in the CWA;

(h) Energy consumption reduction for publicly owned treatment works;

(i) Reuse or recycling of wastewater, stormwater, or subsurface drainage water;

(j) Facilities to improve drinking water quality;

(k) Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements;

(*l*) New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage;

(m) Storage of drinking water, such as to prevent contaminants or equalize water demands;

(n) Purchase of water systems and interconnection of systems;

(o) New community water systems;

(p) Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure;

(q) Dam and reservoir rehabilitation, if the primary purpose of dam or reservoir is for drinking water supply and project is necessary for the provision of drinking water;

(r) Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act; and

(s) Any eligible drinking water, wastewater or stormwater project through ARPA guidelines, guidance, rules, regulations and other criteria, as may be amended from time to time, by the United States Department of the Treasury.

(6) The governing authority of a municipality, county or public utility that is not regulated by the Public Service Commission may submit an application for grant funds under this section if the applicant is an operator-member of Mississippi 811, Inc., as defined in Section 77-13-3. Applicants shall certify to the department that each expenditure of the funds awarded to them under this section is in compliance with ARPA guidelines, guidance, rules, regulations and other criteria, as may be amended from time to time, by the United States Department of the Treasury regarding the use of monies from the State Coronavirus State Fiscal Recovery Funds. Subsequent submissions will be due by the dates established by the department.

(7) An application for a grant under this section shall be submitted at such time, be in such form, and contain such information as the department prescribes. Each application for grant funds shall include the following at a minimum: (a) applicant contact information; (b) project description and type of

project; (c) project map; (d) estimate of population affected by the project; (e) disadvantaged community criteria (population, median household income, unemployment, current water/sewer rates); (f) estimated project cost; (g) list of match funds of direct Coronavirus Local Fiscal Recovery Funds received and to be received from the federal government, a certification that such funds have been or will be used for the project detailed in the application, and documentation of commitment; (h) estimated project schedule and readiness to proceed; (i) engineering services agreement; (j) engineering reports; and (k) information about status of obtaining any required permits. .

(8) The department must apply a system for use in ranking the grant applications received. When applying the ranking system, the department shall apply a greater weight to projects that have approved engineering/design, plans and permits if the department has deemed the project is ready to begin construction within six (6) months. Projects that are included on the municipal or county engineer's approved list and provide applicable supporting documentation shall receive additional consideration awarded to the application. The ranking system shall include the following factors, at a minimum: (a) the environmental impact of the proposed project; (b) the proposed project's ability to address noncompliance with state/federal requirements; (c) the extent to which the project promotes economic development; (d) the number of people served by the project and the number of communities the project serves; (e) impacts of the proposed project on disadvantaged/overburdened communities; (f) the grant applicant's prior efforts to secure funding to address the proposed project's objectives; (g) the grant applicant's proposed contribution of other funds or in-kind cost-sharing to the proposed project; (h) the grant applicant's long-term plans for the financial and physical operation and maintenance of the project; (i) the grant applicant's capacity to initiate construction in a timely manner and complete the proposed project by the deadline specified by the United States Department of Treasury rules for ARPA funds; (j) the extent to which the project benefits multiple political subdivisions in a regional manner; (k) the project's ability to enhance public service infrastructure, including transportation and emergency access; and (*l*) any other factors as determined by the department.

(9) The grant program shall include a specific emphasis on addressing the needs of an economically disadvantaged community, including providing safe, reliable drinking water in areas that lack infrastructure, providing sewage treatment capacity in unsewered areas and providing regional development of infrastructure to serve multiple communities.

(10) Applications shall be reviewed and scored as they are received. The Mississippi Department of Environmental Quality shall certify whether each project submitted is a "necessary investment" in water, wastewater, or stormwater infrastructure as defined in the American Rescue Plan Act and all applicable guidance issued by the United States Department of the Treasury. The Department of Environmental Quality shall review the lists of recommended water infrastructure projects and issue its list of recommended projects to the Mississippi Department of Health for its advice. Grant agree-

ments shall be executed between the recipient and the Mississippi Department of Environmental Quality. All final awards shall be determined at the discretion of the executive director of the department. Any funds awarded to the City of Jackson under this section shall be deposited in the Capital City Water/Sewer Projects Fund of the State Treasury. Funds shall be obligated to a grantee upon the execution of a grant agreement between the department and the approved applicant. Funds shall be made available to a grantee when the department obtains the necessary support for reimbursement. The department is authorized to conduct additional rounds of grants as needed; however, in the first round no more than forty percent (40%) of the total funds appropriated for each grant program may be awarded by the department, and the remaining funds may be awarded in the second or subsequent rounds which shall occur no later than six (6) months from the previous round. To ensure equitable treatment between the categories of projects, no less than twenty percent (20%) awarded under this section shall be allocated to each of the three (3) categories of drinking water projects, wastewater projects and stormwater projects. In second or subsequent rounds, any funds not requested may be allocated to any category.

(11) Grant funds shall be used prospectively; however, grant funds may be used to reimburse expenses incurred before the enactment of this program if the costs are adequately documented and comply with applicable ARPA guidelines. An applicant must agree to obtain all necessary state and federal permits and follow all state bidding and contracting laws and fiscally sound practices in the administration of the funds.

(12)(a) Monies must be disbursed under this section in compliance with the guidelines, guidance, rules, regulations or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus State Fiscal Recovery Fund, established by the American Rescue Plan of 2021.

(b) The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each person receiving funds under these programs found to be fully or partially noncompliant with the requirements in this section shall return to the state all or a portion of the funds received.

(13) The department shall submit to the Lieutenant Governor, Speaker of the House, House and Senate Appropriations Chairmen, and the Legislative Budget Office quarterly reports and annual reports that are due by the dates established in the Compliance and Reporting Guidance by the United States Department of Treasury. The reports shall contain the applications received, the score of the applications, the amount of grant funds awarded to each applicant, the amount of grant funds expended by each applicant, and status of each applicant's project.

(14) Grant funds shall be available under this section through December 31, 2026, or on the date of the fund expenditure deadline provided by the federal government, whichever occurs later. Each grant recipient shall certify

for any project for which a grant is awarded that if the project is not completed by December 31, 2026, and the United States Congress does not enact an extension of the deadline on the availability of ARPA funds, then the grant recipient will complete the project through other funds.

(15) The Mississippi Department of Environmental Quality may retain an amount not to exceed five percent (5%) of the total funds allocated to the program to defray administrative costs.

(16) The department shall be exempt from provisions of the Public Procurement Review Board for any requirements of personal or professional service contracts or the pre-approval of the solicitation for such contracts used in the execution of its responsibilities under this section. This subsection shall stand repealed on January 1, 2026.

(17) The provisions of this section shall stand repealed on January 1, 2027.

HISTORY: Laws, 2022, ch. 509, § 1, eff from and after passage (approved April 26, 2022).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a misspelling in this section by substituting "bidding" for "biding" in (11). The Joint Committee ratified the correction at its August 10, 2022, meeting.

CHAPTER 4.

MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS

§ 49-4-9. Powers and duties of Department of Wildlife, Fisheries and Parks.

Editor's Notes — Laws of 2015, ch. 356, §§ 1 and 2 provide:

"SECTION 1. (1) The Department of Wildlife, Fisheries and Parks, is hereby authorized to sell, lease, or exchange for a tract or tracts of equal value, a certain parcel of real property with improvements, located in Claiborne County, Mississippi, being part of the Canemount Wildlife Management Area, containing the historic home and outbuildings, provided that the sale and conveyance is subject to the requirements of Section 29-1-1. The authority set forth herein shall include the right to advertise for sale or lease to the highest and best bidder. The tract of land and any improvements located thereon, which is authorized to be sold is more particularly described as follows:

"Point of Commencement (POC) being the SE corner of irregularly shaped section 48, Township 11 North, Range 1 East, located at MS West NAD 83 FT coordinates 869193.392, 2052684.338; from(POC) travel N 79° 43' 13" W for 3107.634 feet to a point; thence N 14° 23' 37" E for 1117.215 feet to the Point of Beginning (POB); thence N 0° 56' 45" W for 788.031 feet to a point; thence along a curve following MS 552 to the right with a chord bearing and distance of N 8° 4' 49" E, for 688.916 feet, said curve radius being 2200 feet, to a point; thence S 90° E for 1106.426 feet to a point; thence S 0° E for 1470 feet to a point; thence S 90° W for 1190.263 feet to the POB.

"(2) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into the Fisheries and Wildlife Fund of the State Treasury and shall not be deposited into the State General Fund.

"SECTION 2. Any advertisements or notices required to effect the sale, lease, or exchange of this property, shall include information stating that the dwelling house located on the property is listed on the National Register of Historic Places, and subject to any and all rules and regulations appertaining thereto."

CHAPTER 7.

HUNTING AND FISHING

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Beaver Control Program. 49-7-201
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IN GENERAL

Sec.
49-7-3. Issuance of resident hunting or fishing licenses; possession of license.
49-7-4. Exemption of records relating to hunting, fishing and trapping license applications and holders of such licenses from Mississippi Public Records Act.
49-7-5. Fees for resident hunting, fishing, and combination hunting and fishing licenses; exemptions.
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49-7-12.1. Nonresident wholesale dealers who buy certain fish and nonresidents who import certain fish are required to obtain commercial fishing licenses.
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49-7-21. License certificates; hunting, trapping or fishing without license prohibited; penalties.
49-7-31. Open season on deer.
49-7-31.1. Open season on deer; requirements for wearing hunter orange during any firearm season; exceptions; penalties.
49-7-31.2. Open season for game birds.
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Sec.
49-7-31.6. Velvet hunting season; special hunts during velvet hunting season outside of open season on deer.
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49-7-65. Unlawful to hunt, when.
49-7-140. Importation, release and transportation of wild hogs prohibited; penalty.

§ 49-7-3. Issuance of resident hunting or fishing licenses; possession of license.

(1) Any resident of the State of Mississippi shall be entitled to receive a resident fishing license.

(2) Any person domiciled within the State of Mississippi shall be entitled to receive a resident hunting license provided in Section 49-7-5. The domicile of a person is that person's principal or primary home or place of abode. A "principal or primary home or place of abode" is that home or place in which a person's habitation is fixed and to which he, whenever absent, has the present intention of returning after a departure of absence therefrom, regardless of the duration of the absence. The burden of proving domicile shall be on the person claiming such status. The following evidence or other reliable evidence may be considered in establishing, but is not necessarily determinative of, domicile: driver's license, valid and current tribal identification card issued by a federally recognized Indian tribe containing a photograph of the person submitting the identification card, residence for income or other tax purposes, homestead exemption receipt, or any other means prescribed by the department. In the case of minors, domicile of the parents shall be used as evidence of the minor's domicile.

(3) A nondomiciliary of the state may be issued a resident hunting or fishing license or combination resident hunting/fishing license upon providing the following:

(a) A current identification card from a Mississippi college or university; or

(b) A current military identification card showing that the person is an active member of the United States Armed Forces (excluding Reserves and the National Guard) and proof that the person is stationed on a military base in Mississippi.

(4) A nondomiciliary of the state may be issued a special Armed Forces fourteen-day hunting and fishing license with the same hunting and fishing privileges and at the same fee of a resident sportsman's license, if the nondomiciliary is an active member of the United States Armed Forces (excluding Reserves and the National Guard) and his application is approved by the department. The applicant must file his application for the special fourteen-day license in the office of the department. The department shall establish requirements for proof of active military status and any other requirements it deems desirable. The department shall not issue more than two (2) special fourteen-day licenses to the same applicant per license year.

(5) A holder of a resident or nonresident license is required to carry the license on his person while engaged in hunting, trapping or fishing. Any penalty for not carrying a license while engaged in hunting, trapping or fishing shall be waived if the person can verify purchase of a license prior to the date of the violation.

(6) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

HISTORY: Codes, 1942, § 5870; Laws, 1932, ch. 123; Laws, 1942, ch. 250; Laws, 1950, ch. 218, §§ 1, 2; Laws, 1958, ch. 178; Laws, 1962, ch. 189, § 1; Laws, 1970, ch. 285, §§ 1, 2; Laws, 1971, ch. 371, § 1; Laws, 1989, ch. 416, § 1; Laws, 1991, ch. 563, § 1; Laws, 1994, ch. 408, § 3; Laws, 1995, ch. 580, § 1; Laws, 1997, ch. 588, § 18; Laws, 1999, ch. 397, § 1; Laws, 2004, ch. 587, § 1, eff from and after July 1, 2004; Laws, 2021, ch. 378, § 5, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the fifth sentence of (2), inserted "valid and current tribal identification card...person submitting the identification card."

§ 49-7-4. Exemption of records relating to hunting, fishing and trapping license applications and holders of such licenses from Mississippi Public Records Act.

The records of the Department of Wildlife, Fisheries and Parks relating to applications for and sales of any resident or nonresident licenses issued under this chapter, and all records related to holders of such licenses, are exempt from the provisions of the Mississippi Public Records Act of 1983, in accordance with Section 25-61-11, and shall be released only upon order of a court having proper jurisdiction over a petition for release of the record or records. However, upon request, the records specified in this section shall be available to all law enforcement agencies.

HISTORY: Laws, 2016, ch. 428, § 1, eff from and after July 1, 2016.

Cross References — Mississippi Public Records Act, see § 25-61-1 et seq.

§ 49-7-5. Fees for resident hunting, fishing, and combination hunting and fishing licenses; exemptions.

(1)(a) Any resident, as defined in Section 49-7-3, upon application, shall receive a combination resident hunting and fishing license for the sum of Twenty-five Dollars ($25.00). The license shall qualify the licensee to hunt under this chapter all game and fowl, including deer and turkey, and to fish in any county of the state.

(b) Any resident, as defined in Section 49-7-3, upon application, shall receive a resident combination small game hunting and fishing license for the sum of Ten Dollars ($10.00) together with the fee provided in Section 49-7-17 to the office or agent issuing the license. The hunting license shall qualify the licensee to hunt and fish under this chapter all game and fowl, except deer and turkey, in any county in the state.

(c) Any resident, as defined in Section 49-7-3, upon application, shall receive a sportsman's license for the sum of Forty-five Dollars ($45.00). The license shall qualify the licensee to hunt under this chapter all game and fowl, including deer and turkey, and to fish as provided by law, in any county in the state, and to hunt using primitive weapons and bow and arrow in the manner provided by law. The commission may notify the licensee of the expiration of his license, and the licensee may renew the license by mailing the sum of Forty-five Dollars ($45.00) to the commission. A licensee who has not renewed the license within thirty (30) days after the expiration date shall be removed from the commission's records, and the licensee must apply to be placed on the renewal list.

(d) In addition to a hunting license allowing the taking of turkey, a resident who hunts turkey during a fall turkey season must purchase a fall turkey hunting permit for a fee of Five Dollars ($5.00) plus the fee provided in Section 49-7-17. A resident sportsman's licensee or resident lifetime sportsman's licensee may hunt during the fall turkey season without purchasing a permit.

(e) The commission may offer a resident apprentice hunting license for a resident who does not have the required certificate of hunter education and may set the fee for the apprentice hunting license. An apprentice license may be purchased only one (1) time by a resident and the apprentice hunting licensee must be accompanied by a licensed or exempt resident hunter at least twenty-one (21) years of age when hunting.

(2)(a) Any resident citizen of the State of Mississippi who has not reached the age of sixteen (16) years or who has reached the age of sixty-five (65) years, or any resident citizen who is blind, paraplegic, or a multiple amputee, or who has been adjudged by the Veterans Administration as having a total service-connected disability, or has been adjudged to be totally disabled by the Social Security Administration shall not be required to purchase or have in his possession, a hunting or fishing license while

engaged in such activities. A person exempt by reason of total service-connected disability, as adjudged by the Veterans Administration or who has been adjudged to be totally disabled by the Social Security Administration or who is blind, paraplegic or a multiple amputee, shall have in their possession and on their person proof of their age, residency, disability status or other respective physical impairment while engaged in the activities of hunting or fishing.

(b) Any resident who is a member of the Armed Forces, including the Reserves and National Guard, and on active duty outside the State of Mississippi is not required to purchase or have in his possession a hunting or fishing license while engaged in such activities on leave from active duty. The resident shall have in his possession and on his person any proof as may be required by the commission.

(c) All exempt hunting and fishing licenses previously issued for disabilities shall be null and void effective July 1, 1993.

(d) The commission may offer a youth all-game hunting and fishing license for exempt youths who have a hunter education certificate and an all-game hunting and fishing license for other persons exempted under paragraph (a). Youths and other exempt persons shall not be required to purchase this license or have it in possession while hunting or fishing. The commission may establish a fee not to exceed Five Dollars ($5.00) for the licenses.

(e) The requirement for purchasing and/or having a hunting or fishing license authorized in subsection (1) of this section may be waived for any resident or nonresident who is an honorably discharged veteran with a combat-related disability and who will be participating in a special hunt, fishing trip or other outdoor recreational event that is available only to such persons as determined by the entity sponsoring the event. The commission is authorized to establish such criteria and/or procedures for an organization to be recognized as a sanctioned entity that provides unique outdoor recreational opportunities for wounded or disabled veterans. Any events sponsored by a recognized organization, and the persons participating in such event, shall be entitled to the waiver set forth above without further action on the part of the commission or the sponsoring organization.

(3) No license shall be required of residents to hunt, fish or trap on lands in which the record title is vested in such person.

(4) Any person or persons exempt under this section from procuring a license shall be subject to and must comply with all other terms and provisions of this chapter.

(5) Any person authorized to issue any license under this section may collect and retain for the issuance of each license the additional fee authorized under Section 49-7-17.

HISTORY: Codes, 1942, §§ 5871, 5876; Laws, 1932, ch. 123; Laws, 1942, ch. 250; Laws, 1944, ch. 237, § 1; Laws, 1954, ch. 172; Laws, 1956, ch. 150; Laws, 1958, ch. 174; Laws, 1962, ch. 189, § 2; Laws, 1966, ch. 263, § 1; Laws, 1971, ch. 372, § 1; Laws, 1973, ch. 358, § 1; Laws, 1978, ch. 343, § 1; Laws, 1978, ch. 465, § 2; Laws,

1988, ch. 435, § 2; Laws, 1993, ch. 463, § 1; Laws, 2002, ch. 547, § 1; Laws, 2004, ch. 342, § 1; Laws, 2006, ch. 486, § 2; Laws, 2007, ch. 477, § 1; Laws, 2013, ch. 501, § 1; Laws, 2016, ch. 418, § 1; Laws, 2017, ch. 426, § 1, eff from and after July 1, 2017.

Amendment Notes — The 2013 amendment substituted "Eight Dollars ($8.00)" for "Thirteen Dollars ($13.00)" in (1)(b); deleted former (1)(c), which read: "Any resident of the State of Mississippi, as defined in Section 49-7-3, upon application, shall receive a resident small game license, and for it shall pay the issuing officer or agent the sum of Thirteen Dollars ($13.00), together with the fee provided in Section 49-7-17 to the officer or agent issuing such license. Such hunting license shall qualify the person holding the same to hunt under the provisions of this chapter, and in season, all game and fowl, except deer and turkey, in any county in the state" and renumbered the remaining subdivisions accordingly; substituted "any" for "such" in the last sentence in (2)(b); and made minor stylistic changes throughout.

The 2016 amendment, in the version of the section effective from and after the increase of nonresident license fees by the Commission on Wildlife, Fisheries and Parks, substituted "Twenty-five Dollars ($25.00)" for "Seventeen Dollars ($17.00)" in (1)(a), "Ten Dollars ($10.00)" for "Eight Dollars ($8.00)" in (1)(b), and "Forty-five Dollars ($45.00)" for "Thirty-two Dollars ($32.00)" both times it appears in (1)(c).

The 2017 amendment deleted the version of the section effective until the Mississippi Commission on Wildlife, Fisheries and Parks increases the fee for nonresident licenses in accordance with the authority provided in Section 49-7-8; and added (2)(e).

§ 49-7-7. Use of revenue from increase in license fees.

The revenue collected from any increase in license fees pursuant to Chapter 418, Laws of 2016, shall be designated for use by the Department of Wildlife, Fisheries and Parks for recruitment, training, equipping and compensation of conservation officers to fill existing vacancies.

HISTORY: Laws, 2016, ch. 418, § 3, eff from and after July 1, 2016.

Editor's Notes — Chapter 418, Laws of 2016, enacted this section and amended Sections 49-7-5 and 49-7-9.

§ 49-7-9. Resident fishing licenses.

(1)(a) Each resident of the State of Mississippi, as defined in Section 49-7-3, fishing in the public fresh waters of the state, including lakes and reservoirs, but not including privately owned ponds and streams, shall purchase a combination small game hunting and fishing license as provided in Section 49-7-5 for Ten Dollars ($10.00). Any resident purchasing a license as prescribed in this subsection shall be entitled to fish, in accordance with the regulations and ordinances of the commission, in all public fresh waters within the territory of the State of Mississippi.

(b) A resident may purchase a resident fishing license valid for a period of three (3) days for the sum of Three Dollars ($3.00).

(c) No license shall be required of any resident citizen of the State of Mississippi who has not reached the age of sixteen (16) years or who has reached the age of sixty-five (65) years or who is blind, paraplegic, a multiple amputee or has been adjudged by the Veterans Administration as having a

total service-connected disability, or has been adjudged totally disabled by the Social Security Administration. Such person shall not be required to purchase or have in his possession a hunting or fishing license while engaged in such activities.

(d) A person exempt by reason of age, total service-connected disability as adjudged by the Veterans Administration or total disability as adjudged by the Social Security Administration or who is blind, paraplegic or a multiple amputee, shall have in their possession and on their person proof of their age, residency, disability status or other respective physical impairment while engaged in the activities of hunting or fishing.

(e) Any resident who is a member of the Armed Forces, including the Reserves and National Guard, and on active duty outside the State of Mississippi is not required to purchase or have in his possession a hunting or fishing license while engaged in such activities on leave from active duty. Such resident shall have in his possession and on his person such proof as may be required by the commission.

(f) The requirement for purchasing and/or having a hunting or fishing license authorized in this subsection (1) may be waived for any resident or nonresident who is an honorably discharged veteran with a combat-related disability and who will be participating in a special hunt, fishing trip or other outdoor recreational event that is available only to such persons as determined by the entity sponsoring the event. The commission is authorized to establish such criteria and/or procedures for an organization to be recognized as a sanctioned entity that provides unique outdoor recreational opportunities for wounded or disabled veterans. Any events sponsored by a recognized organization, and the persons participating in such event, shall be entitled to the waiver set forth above without further action on the part of the commission or the sponsoring organization.

(2)(a) All persons fishing in privately owned lakes or ponds shall have specific permission to do so from the owner of such lake or pond.

(b) Residents do not need a fishing license to fish in those waters, except when the owner of the lake or pond charges a fee for fishing, then a resident must have a fishing license to fish in those waters unless exempted under subsection (1) of this section.

(3) The first weekend of "National Fishing and Boating Week" in June of each year is designated as "Free Fishing Weekend." July 4 is designated as "Free Fishing Day." Any person may sport fish without a license on "Free Fishing Weekend," and on "Free Fishing Day."

(4) Any person authorized to issue any license under this section may collect and retain for issuing each license the additional fee authorized under Section 49-7-17.

HISTORY: Codes, 1942, § 5906; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1938, ch. 178; Laws, 1938, Ex. Sess. ch. 78; Laws, 1942, ch. 250; Laws, 1958, ch. 175; Laws, 1966, ch. 265, § 1; Laws, 1973, ch. 451, § 1; Laws, 1978, ch. 465, § 4; Laws, 1982, ch. 435, § 5; Laws, 1987, ch. 413; Laws, 1988, ch. 435, § 5; Laws, 1988, ch. 600; Laws, 1989, ch. 377, § 2; Laws, 1993, ch. 463, § 2; Laws, 1995, ch. 402, § 1;

Laws, 1998, ch. 409, § 1; Laws, 2007, ch. 471, § 1; Laws, 2007, ch. 477, § 2; Laws, 2010, ch. 332, § 1; Laws, 2013, ch. 471, § 1; Laws, 2016, ch. 418, § 2; Laws, 2017, ch. 426, § 2, eff from and after July 1, 2017.

Amendment Notes — The 2013 amendment in (1)(a), substituted "purchase a combination small game hunting and fishing license as provided in Section 49-7-5 for" for "pay an annual license fee of" in the first sentence, deleted "public freshwater fishing" preceding "licensed as prescribed" in the last sentence; deleted former (2) through (8) and redesignated the remaining subsections accordingly; added (2)(b); in (3), added the second sentence, substituted "and on 'Free Fishing Day' " for "additionally, July 4 is still designated as free fishing day on the Mississippi Gulf Coast"; and made minor stylistic changes throughout.

The 2016 amendment, in the version of the section effective from and after the increase of nonresident license fees by the Commission on Wildlife, Fisheries and Parks, substituted "Ten Dollars ($10.00)" for "Eight Dollars ($8.00)" in (1)(a).

The 2017 amendment deleted the version of the section effective until the Mississippi Commission on Wildlife, Fisheries and Parks increases the fee for nonresident licenses in accordance with the authority provided in Section 49-7-8; and added (1)(f).

§ 49-7-9.1. Commercial fishing licenses; who is required to purchase; labeling of commercial fishing equipment; slat basket license; fees.

(1)(a) Any resident engaged in fishing for commercial purposes and selling or peddling nongame gross fish at retail or selling or shipping same at wholesale, as to markets, dealers or canning plants, shall purchase a commercial fishing license.

(b) A licensee must label each piece of commercial fishing equipment with a waterproof or metal tag containing any information required by the department. A piece of commercial fishing equipment is defined as: One (1) each hoop or barrel net; one thousand (1,000) feet or less of trotline; one thousand (1,000) feet or less of snagline; three thousand (3,000) feet or less of gill netting; or three thousand (3,000) feet or less of trammel netting. Netting of over three thousand (3,000) feet is prohibited.

(c) Upon the purchase of a commercial license for use of hoop or barrel nets, the licensee is permitted to use lead nets thirty-five (35) yards in length for each two (2) barrel nets used, but not to exceed seven (7) lead nets.

(2) Each person taking nongame gross fish as defined in Section 49-7-1, of any kind from the fresh waters of the state shall be considered a producer and shall be entitled to sell his own catch of nongame gross fish to anyone except as otherwise provided by law or applicable regulations.

(3) Each resident buying or handling nongame gross fish secured from commercial fishermen or others for the purpose of resale, whether handled on a commission basis or otherwise, and each resident shipping nongame gross fish not his own catch out of the State of Mississippi shall be considered a wholesale dealer and shall purchase a commercial fishing license. Resident wholesale dealers' licenses shall be issued only to persons who have been bona fide residents of the State of Mississippi for at least six (6) months.

(4) Each resident buying nongame gross fish from a licensed wholesale

dealer or licensed commercial fisherman for retail sale to the consumer only on rural or urban routes shall purchase a commercial fishing license to do so.

(5) Each resident engaged in the buying and selling of nongame gross fish as a wholesale dealer's agent, whether on a commission or salary basis, or otherwise, and not selling in the open market, shall purchase a commercial fishing license and shall be responsible for any illegal transaction ensuing between the time he purchases the fish from the fisherman and the time the fish are accepted by the wholesaler by whom he is employed.

(6)(a) Any resident using a wooden or plastic slat basket shall purchase a slat basket license for each basket each year in addition to a commercial fishing license. Slat baskets are defined as commercial fishing devices used solely for the capture of catfish and made entirely of wood and/or plastic slats in a box-like or cylindrical shape. Slat baskets shall not exceed six (6) feet in length nor exceed fifteen (15) inches in width and height or diameter, may have no more than two (2) throats, and must have at least four (4) slot openings at least one and one-fourth (1-1/4) by twenty-four (24) inches evenly spaced around the sides of the catch area. The one and one-fourth (1-1/4) inch wide slots or greater must begin at the rear of the basket and run twenty-four (24) inches toward the throat end of the basket. Slat baskets shall be placed at least one hundred (100) yards apart and may not be used with any form of leads, netting or guiding devices.

(b) Each slat basket shall have a waterproof or metal tag attached to it containing any information required by the department. Any other identification of the owner of the slat basket shall meet any specifications required by the department. Slat baskets may be fished statewide except where specifically prohibited.

(c) Any violation of this subsection shall be a Class I violation as prescribed in Section 49-7-141.

(7) It is unlawful for any person to offer for sale undersized nongame gross fish.

(8)(a) The fee for a resident commercial fishing license shall be Thirty Dollars ($30.00).

(b) The fee for a slat basket license shall be Thirty Dollars ($30.00).

(9) Any person authorized to issue any license under this section may collect and retain for issuing each license the additional fee authorized under Section 49-7-17.

HISTORY: Laws, 2013, ch. 471, § 2, eff from and after July 1, 2013.

§ 49-7-10. Repealed.

Repealed by its own terms effective July 1, 2012.

§ 49-7-10. [Laws, 2010, ch. 384, § 1, eff from and after July 1, 2010.]

Editor's Notes — Former § 49-7-10 permitted an owner of a pier in public or private waters to obtain an annual group pier fishing license.

A former § 49-7-10 [Laws, 1993, ch. 603, § 1; Repealed by Laws 1994, ch. 578, § 65, effective from and after July 1, 1994] related to marine water and saltwater licensing requirements. Similar provisions are found in § 49-15-313.

§ 49-7-12. Reciprocal agreements with other states; nonresident freshwater commercial fishing licenses; fees; penalties.

(1) The commission may promulgate rules and regulations for nonresident recreational and commercial permits and licenses in order to promote and to enter into reciprocal agreements with other states.

(2) The commission may issue and prescribe the forms, types and fees of nonresident freshwater commercial fishing licenses to be sold by the department and not by licensing agents.

(3)(a) The commission may prescribe regulations for nonresident commercial fishing equipment, tagging requirements, harvest size and possession restrictions, restricted areas, fishing restrictions, reporting requirements, wholesale dealers, and the selling, reselling and exporting of fish taken in the public freshwaters of the state.

(b) The commission may exercise all powers necessary to regulate nonresident freshwater commercial fishing.

(4) The commission may require a nonresident to purchase the same type and number of freshwater commercial fishing licenses and pay the same fees that are required of Mississippi residents to engage in like activity in the nonresident's state.

(5) Any nonresident who engages in freshwater commercial fishing without having the required licenses is guilty of a Class I violation and punishable as provided under Section 49-7-141 and shall forfeit any equipment, gear or nets used in the offense.

HISTORY: Laws, 2007, ch. 471, § 2; Laws, 2013, ch. 471, § 3, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added (3)(a) and (b) and renumbered former (3) and (4) as (4) and (5).

§ 49-7-12.1. Nonresident wholesale dealers who buy certain fish and nonresidents who import certain fish are required to obtain commercial fishing licenses.

(1) Nonresident wholesale dealers who buy nongame gross fish in the state for the purpose of resale shall obtain a nonresident commercial fishing license.

(2) Any nonresident who imports nongame gross fish into the state for the purpose of resale to a wholesale or retail dealer or to a consumer shall obtain a nonresident commercial fishing license.

HISTORY: Laws, 2013, ch. 471, § 4, eff from and after July 1, 2013.

§ 49-7-13. Definitions; fee for resident trapper's license; permission of landowners to trap; certain types of traps prohibited; identification of traps; placing or setting traps near public roads or streets; exemptions; selling of skins and meat of certain animals during and after trapping season.

(1) For the purposes of this chapter, the following terms shall have the meaning ascribed herein, unless the context determines otherwise:

(a) "Raw fur" means the skin that has not been removed from the carcass of a fur-bearing animal or nuisance animal.

(b) "Green pelt" means the skin, with hair or fur attached, that has been removed from a fur-bearing animal or nuisance animal, but has not been tanned or fleshed, stretched and dried.

(c) "Dried pelt" means the skin of a fur-bearing animal or nuisance animal that has been fleshed, stretched and dried.

(2) Any resident of the state sixteen (16) years of age or older, upon application, is entitled to receive a state trapper's license with tag for the sum of Twenty-five Dollars ($25.00), plus the fee provided in Section 49-7-17. This license shall be required of each helper or assistant sixteen (16) years of age or older employed or used by a trapper. No license shall be required of a resident who traps on lands in which the record title is vested in that person.

(3)(a) No person shall trap on the lands of another unless he has the permission of the landowner.

(b) No person shall use, on any public lands, a conibear-type or body-gripping trap with an inside jaw spread exceeding seven (7) inches, unless it is partially submerged in water. The designated legal authority of any public lands and its agents shall be exempt from the requirement of this subsection for the purpose of nuisance control.

(4)(a) Each licensed trapper shall have an identification number issued by the department. The licensed trapper shall have the identification number permanently inscribed on the trap or attached to the trap by a metal tag.

(b) A person exempt from purchasing a trapping license must tag or permanently inscribe any trap with his name, phone number and address.

(c) The conservation officer may take up any traps not properly marked.

(d) Every trapper shall visit his traps at least every thirty-six (36) hours.

(5) Except as otherwise provided in this section, no person shall place or set a trap on or within one hundred (100) feet of any street or public road. Public roads shall not be construed to mean public waterways.

(6)(a) A licensed trapper or resident under sixteen (16) years of age shall be allowed to trap fur-bearing animals during trapping season, and sell or consign the raw fur, green pelts and dried pelts of fur-bearing and nuisance animals during the trapping season and for thirty (30) days after the close of the season. Only a licensed trapper or resident under sixteen (16) years of age may sell or consign the raw fur, green pelts and dried pelts of fur-bearing nuisance animals.

(b) A trapper may not transport the raw fur or green pelts of fur-bearing animals within the state from eleven (11) days after the close of trapping season until the opening day of the following trapping season, unless each raw fur or green pelt is tagged or documented with the name, address and trapping identification number of the person who harvested the raw fur or green pelt and the date and place of harvest. An official possession tag that has been issued by another state shall be considered legally documented.

(c) A licensed trapper may possess and maintain in storage the raw fur, green pelts and dried pelts of fur-bearing and nuisance animals at any time.

(d) The meat of legally acquired raccoons, opossums and muskrats may also be bought and sold during trapping season, and for thirty (30) days after the close of the season.

(7)(a) A municipality or county, or any person who has contracted with a municipality or county for the purpose authorized in this subsection, may place or set only snare traps within one hundred (100) feet of any road or street located within such municipality or county. Before the action authorized by this section is taken, the governing authority of the municipality or the board of supervisors of the county shall make a finding that such placement of snare traps is reasonable and necessary to protect the public safety by removing fur-bearing and nuisance animals that threaten the safety of public roads and bridges. Snares shall be submerged at least fifty percent (50%).

(b) Landowners and their designated agents may place or set snare traps, conibear-type or body-gripping traps, live cage traps and foothold traps on property owned by the landowner within one hundred (100) feet of any road or street, but not within the maintained public road or street right-of-way.

(c) Snare traps, conibear-type or body-gripping traps shall be submerged in water at least fifty percent (50%) and foothold traps shall be completely submerged in water.

HISTORY: Codes, 1942, § 5873; Laws, 1932, ch. 123; Laws, 1978, ch. 465, § 7; Laws, 1988, ch. 435, § 7; Laws, 1993, ch. 463, § 3; Laws, 1999, ch. 401, § 1; Laws, 2005, ch. 489, § 1; Laws, 2006, ch. 522, § 2; Laws, 2010, ch. 491, § 1; Laws, 2013, ch. 514, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added (1) and redesignated former (1) through (4) as (2) through (5); added the last sentence in (2); added (3)(b) and (4)(b); in (4)(a), substituted "Each licensed trapper shall have an identification number issued by the department. The licensed trapper shall have the identification number" for "Each trap shall have an identification number"; rewrote (6) adding designators and (b) and (c); substituted "thirty (30)" for "ten (10)" in (6)(d); added (7)(b) and (c); and made minor stylistic changes.

§ 49-7-20. Requirement of satisfactory completion of hunter education course; resident apprentice hunting license; resident combination small game hunting and fishing license.

(1) It is unlawful for any person born on or after January 1, 1972, to

procure any Mississippi hunting license, except a resident apprentice hunting license and a resident combination small game hunting and fishing license, unless the person has been issued certification of satisfactory completion of a hunter education course approved by the department.

(2) It is unlawful for any person to issue any Mississippi hunting license, except a resident apprentice hunting license and resident combination small game hunting and fishing license, to any person born on or after January 1, 1972, unless the purchaser has provided valid certification of satisfactory completion of a hunter education course approved by the department.

(3) It is unlawful for any person to fraudulently obtain a hunter education certification.

(4) The department may revoke any hunting license or hunter education certification upon determination that the holder was not entitled to issuance or obtained the license or certification by any fraudulent means.

(5) It is unlawful for any person born on or after January 1, 1972, to hunt with a resident combination small game hunting and fishing license, unless the person has been issued certification of satisfactory completion of a hunter education course approved by the department.

(6) The hunter education course required for purposes of licensure shall be deemed to be satisfied by any student who enrolls in and successfully completes a school-based hunter safety course provided in accordance with Section 49-7-20.2.

HISTORY: Laws, 1985, ch. 445, § 1; Laws, 1995, ch. 409, § 5; Laws, 2006, ch. 486, § 3; Laws, 2013, ch. 501, § 2, eff from and after July 1, 2013; Laws, 2020, ch. 364, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2013 amendment inserted "and a resident combination small game hunting and fishing license" in (1); inserted "and resident combination small game hunting and fishing license" in (2); and added (5).

The 2020 amendment added (6).

§ 49-7-20.2. Course on hunter safety may be added to school curriculum or after-school program for students in grades 7 through 12; minimum requirements of course.

(1) Beginning in the 2020-2021 school year, each school district may offer a course on hunter safety as a component of its curriculum during the day, or as part of an after-school program for students in Grades 7 through 12. The State Board of Education, in consultation with the Mississippi Department of Wildlife, Fisheries and Parks, may prepare and make available to school boards resources on hunter safety that may be used as guidelines for the development of courses authorized under this section.

(2) The hunter safety course must be designed to expose students to firearm safety and to provide, at a minimum, instruction in:

(a) The capabilities of firearms;

(b) Respecting and handling firearms responsibly; and

(c) Managing and controlling firearms.

(3) The hunter safety course must be taught by a well trained individual who is credentialed to provide instruction in the safe handling of firearms. The school district may arrange for any employee of the district or alternatively, an individual who is not employed by the district, to teach the hunter safety course, provided that the person administering the instruction holds certification or another credential that evidences the person's training to provide firearms safety instruction.

(4) The hunter safety course authorized under this section may not be construed to authorize a student, school district employee, firearms safety instructor or any other person who is not otherwise permitted by law or school board policy to carry a weapon on school property or possess a firearm on school property. In training students to handle firearms properly, operable weapons and live ammunition may not be used. Access by any person to the inoperable weapons and ammunition used in the course must be limited to those times that students are in class under the supervision of both the firearms safety instructor and physical education teacher.

(5) No less than one (1) week before the course authorized under this section is scheduled to be taught, the school district must provide written notice to the parents of those students. The notice must inform the parents that a hunter safety course, including training in the proper handling of firearms, will be taught to students as part of the physical education class. The notice must advise parents of the right and the appropriate process to review the materials to be used in the course. Upon the request of any parent, the school must excuse the parent's child from the hunter safety course without detriment to the student.

HISTORY: Laws, 2020, ch. 364, § 1, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the beginning of subsections (4) and (5) by substituting "course authorized under this section" for "course required under this section." The Joint Committee ratified the correction at its October 19, 2020, meeting.

§ 49-7-21. License certificates; hunting, trapping or fishing without license prohibited; penalties.

(1)(a) The licenses for hunting, trapping or fishing shall be issued on a form prepared by the executive director and supplied to the bonded agents authorized to issue licenses. The forms shall bear the name and social security number or driver's license number of the applicant. All annual licenses shall be valid for one (1) year after the date of its issuance. The licenses shall be issued in the name of the commission and be countersigned by the bonded agent issuing same.

(b) A person may purchase a license from the office of the department without appearing in person.

(c) The commission may design, establish, and administer a program to provide for the purchase, by electronic means, of any license, permit, registration or reservation issued by the commission or department.

(2) Any person authorized to issue licenses for hunting, trapping or fishing in this state who attempts to issue a license on a form other than one as prescribed by this section, or attempts to prepare a license certificate in any manner other than on the form prescribed by this section, and furnished by the executive director, is guilty of a Class II violation, and shall be punished as provided in Section 49-7-143, Mississippi Code of 1972, and the person convicted shall be forever barred from issuing licenses in the State of Mississippi.

(3)(a) Any resident or nonresident who hunts, takes or traps any wild animal, bird or fish must possess a valid license issued by the commission, unless specifically exempted under this chapter.

(b) A resident who violates this subsection shall be fined Five Hundred Dollars ($500.00). If at the hearing date or the date of payment of the fine the resident shows proof of the required Mississippi license, the fine shall be reduced to One Hundred Dollars ($100.00). If the resident shows proof that the required license was purchased before the date of the violation, the case shall be dismissed and all court costs shall be waived against the defendant.

(c) In addition to the penalty imposed in paragraph (b), any resident who is not able to show proof of the required Mississippi license, shall be assessed by the court an administrative fee as prescribed under subsection (6) of this section.

(4)(a) Any nonresident, who hunts or traps without the required license is guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for the first offense and shall forfeit hunting and trapping privileges for a period of one (1) year. For the second offense a nonresident shall be fined in an amount of not less than One Thousand Dollars ($1,000.00) nor more than One Thousand Five Hundred Dollars ($1,500.00) or imprisoned in the county jail for not more than thirty (30) days, or both such fine and imprisonment and shall forfeit hunting and trapping privileges for a period of two (2) years. For any third or subsequent offense, a nonresident is guilty of a Class I violation and shall be punished as provided in Section 49-7-141, Mississippi Code of 1972.

(b) The nonresident shall also be assessed by the court an administrative fee as prescribed under subsection (6) of this section.

(c) Forfeiture of hunting, trapping and fishing privileges may be waived if, at the hearing date or the date of payment of the fine, the nonresident shows proof of the required nonresident hunting or trapping license.

(5) Any nonresident who fishes without the required license is guilty of a misdemeanor and, upon conviction, shall be fined in an amount not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00) for the first offense. For the second or any subsequent offense a nonresident shall be fined in an amount not less than Two Hundred Fifty

Dollars ($250.00) nor more than Five Hundred Dollars ($500.00) and that nonresident shall also be assessed by the court an administrative fee as prescribed under subsection (6) of this section.

(6) In addition to any other fines or penalties imposed under subsection (4) or (5) of this section, the person convicted shall be assessed by the court an administrative fee equal in amount to the cost of the hunting, trapping or fishing license fee that such person unlawfully failed to possess at the time of the violation, the amount of which license fee shall be entered upon the ticket or citation by the charging officer at the time the ticket or citation is issued. The clerk of the court in which the conviction takes place, promptly shall collect all administrative fees imposed under this subsection and deposit them monthly with the State Treasurer, in the same manner and in accordance with the same procedure, as nearly as practicable, as required for the collection, receipt and deposit of state assessments under Section 99-19-73. However, all administrative fees collected under the provisions of this subsection shall be credited by the State Treasurer to the account of the Department of Wildlife, Fisheries and Parks, and may be expended by the department upon appropriation by the Legislature.

(7) Any person who obtains a license under an assumed name or makes a materially false statement to obtain a license is guilty of a felony and shall be subject to a fine of Two Thousand Dollars ($2,000.00) or may be imprisoned for a term not to exceed one (1) year, or both.

(8) At the time that a person is applying for or renewing his or her license, the department shall ask the person if he or she would like to register as a donor to make an anatomical gift in accordance with Section 41-39-139. If the answer is yes, the department shall inform the prospective donor that his or her decision to be a donor cannot be revoked, changed or contested after his or her death by the donor's next of kin or by any other person, and shall ask the person if he or she desires information about the person's decision to be a donor to be sent to another person or persons. If the answer is yes, the department shall obtain the name and mailing address of the person or persons designated by the prospective donor, and the donor registry shall send the information about the prospective donor's decision to the designated person or persons as requested.

HISTORY: Codes, 1942, § 5877; Laws, 1932, ch. 123; Laws, 1938, ch. 178; Laws, 1952, ch. 191; Laws, 1974, ch. 569, § 18; Laws, 1978, ch. 465, § 9; Laws, 1980, ch. 471; Laws, 1981, ch. 486, § 1; Laws, 1985, ch. 452, § 9; Laws, 1990, ch. 334, § 1; Laws, 1994, ch. 408, § 1; Laws, 1994, ch. 629; Laws, 1995, ch. 580, § 2; Laws, 1999, ch. 571, § 1; Laws, 2000, ch. 375, § 1; Laws, 2002, ch. 511, § 1; Laws, 2007, ch. 472, § 2; Laws, 2008, ch. 477, § 1; Laws, 2010, ch. 329, § 1, eff from and after July 1, 2010; Laws, 2022, ch. 461, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment added (8).

§ 49-7-31. Open season on deer.

(1) The open season on deer shall be as follows:

(a) With bow and arrow: October 1 through the Friday prior to Thanksgiving.

(b) With guns and with dogs: from the Saturday prior to Thanksgiving through December 1.

(c) With primitive weapons and without dogs: December 2 through December 15.

(d) With guns and without dogs: December 16 through December 23. However, the commission may allow hunting statewide or in specific areas with any legal weapon which it may designate without dogs after the end of the last season for hunting deer with guns and with dogs, but the season with legal designated weapons and without dogs shall not extend beyond January 31.

(e) The commission shall establish an extended season with primitive weapons and bow and arrow without dogs from February 1 through February 15 for the area south of U.S. Highway 84 and east of Mississippi Highway 35 only for legal bucks. Any antlered deer taken in this area during any open season under this section must be a legal buck as defined in this paragraph. For purposes of this paragraph, the term "legal buck" means a deer with antlers of four (4) points or more with a minimum inside spread of ten (10) inches or a minimum main beam length of thirteen (13) inches. The commission may regulate the taking of deer with antlers of four (4) points or less under this paragraph for the proper management of antlered deer. The commission may delay the opening date and change the length of bow and arrow season in paragraph (a) in this area.

(f) With guns and with dogs: December 24 through a date fixed by the commission that will provide a total of thirty-nine (39) days of hunting deer with guns and with dogs when added to the number of days provided for hunting deer with guns and with dogs in paragraph (b).

(g) When the open season on deer ends on a Friday, the commission shall have the authority to extend the season until thirty (30) minutes after sunset on the following Sunday.

(2) The commission may set and regulate the deer seasons on wildlife management areas which it administers.

(3)(a) The commission may allow the harvesting of antlerless deer in the districts or zones upon the recommendation of the executive director based upon good and substantial quantitative data and research evaluations that demonstrate that the harvesting is necessary to properly manage the herd.

(b) The commission, only upon the recommendation of the executive director, may allow the harvesting of antlerless deer during the deer season with guns and with dogs by a majority vote of the commission.

(c) Nothing in this subsection prohibits the harvesting of either-sex deer by landowners or leaseholders on private lands under the deer management assistance program prescribed or approved by the executive director.

(4) The commission may provide a special permit for the harvesting of deer when they are depredating and destroying crops. The department shall

supervise the harvesting and provide for the salvaging of the meat of the animals. The commission may authorize the department to assist any farmer in this state, who sustains crop damage by wildlife, in eradication of the problem wildlife.

(5)(a) During any open season on deer with primitive weapons after November 30, a person may use any legal weapon of choice on private lands only, if the person is:

(i) The title owner of the land;

(ii) The lessee of the hunting rights on the land;

(iii) A member of a hunting club leasing the hunting rights on the land; or

(iv) A guest of a person specified in subparagraph (i), (ii) or (iii).

(b) If the person is required to have a hunting license, the person must have a primitive weapon license, Sportsman's License or a Lifetime Sportsman's License.

(6) The commission shall establish and regulate special hunts during velvet hunting season, outside of the regular open season on deer, as provided in Section 49-7-31.6.

HISTORY: Codes, 1942, § 5882; Laws, 1932, ch. 123; Laws, 1934, ch. 285; Laws, 1936, ch. 221; Laws, 1938, ch. 365; Laws, 1940, ch. 220; Laws, 1944, ch. 234, § 4; Laws, 1948, ch. 255, § 6; Laws, 1960, ch. 162; Laws, 1962, ch. 192; Laws, 1964, ch. 230; Laws, 1968, ch. 259, § 2; Laws, 1970, ch. 286, § 1; Laws, 1972, ch. 493, § 1; Laws, 1975, ch. 327, § 1; Laws, 1977, ch. 468, § 1; Laws, 1980, ch. 305; Laws, 1981, ch. 475, § 2; Laws, 1981, 1st Ex Sess, ch. 9; Laws, 1983, ch. 301, § 1, ch. 527; Laws, 1990, ch. 305, § 1; Laws, 1992, ch. 555, § 1; Laws, 1994, ch. 633, § 1; Laws, 1995, ch. 592, § 1; Laws, 1996, ch. 486, § 2; Laws, 1997, ch. 360, § 1; Laws, 1998, ch. 521, § 1; Laws, 1999, ch. 312, § 1; Laws, 2001, ch. 349, § 1; Laws, 2004, ch. 548, § 1; Laws, 2005, ch. 373, § 2; Laws, 2005, ch. 529, § 4; Laws, 2009, ch. 510, § 1; Laws, 2013, ch. 439, § 1, eff from and after July 1, 2014; Laws, 2020, ch. 308, § 1, eff from and after July 1, 2020; Laws, 2022, ch. 408, § 2, eff from and after July 1, 2022.

Amendment Notes — The 2013 amendment, effective July 1, 2014, added (5).

The 2020 amendment, in (1), substituted "paragraph (a)" for "subsection (1)(a)" in (e), and added (g).

The 2022 amendment added (6).

§ 49-7-31.1. Open season on deer; requirements for wearing hunter orange during any firearm season; exceptions; penalties.

(1) When hunting deer during any firearm season on deer, every hunter, whether hunting with a firearm, bow and arrow or any other weapon, must wear in full view at least five hundred (500) square inches of solid unbroken fluorescent orange, except as otherwise provided in this section.

(2) Hunters shall not be required to wear the five hundred (500) square inches of solid unbroken fluorescent orange required under subsection (1) of this section when:

(a) Hunting from a deer stand that is elevated twelve (12) feet or more above the ground; or

(b) Hunting in a fully enclosed blind.

(3) A violation of this section is a Class III violation and is punishable as provided in Section 49-7-101.

HISTORY: Laws, 2005, ch. 529, § 1; Laws, 2014, ch. 310, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment in (1), substituted "firearm season" for "gun season," preceding "on deer" and substituted "every hunter whether hunting with a firearm, bow and arrow or any other weapon" for "a hunter" thereafter, added the exception, and deleted the former last sentence which read: "This requirement shall not apply to a hunter while the hunter is in a fully enclosed deer stand."; added (2); and redesignated former (2) as present (3).

Cross References — Certain persons authorized to hunt deer with bow during any open season on deer, turkey or small game must comply with this section, see § 49-7-38.

§ 49-7-31.2. Open season for game birds.

The open season for game birds shall be as follows:

(a) On bobwhite quail: The season shall open on Thanksgiving Day and run through the first Saturday in March next following. When the open season ends on a Friday, the commission shall have the authority to extend the season until thirty (30) minutes after sunset on the following Sunday.

(b) On pheasant: There shall be no open season on pheasant.

(c) On wild turkey: The commission may fix the spring season between March 1 and May 15. In addition, the commission may fix special fall either-sex seasons. When the open season ends on a Friday, the commission shall have the authority to extend the season until thirty (30) minutes after sunset on the following Sunday.

(d) On migratory birds: The open season for migratory birds shall be the season prescribed by the Federal Migratory Bird Treaty regulations.

HISTORY: Laws, 2005, ch. 529, § 2, eff from and after July 1, 2005; Laws, 2020, ch. 308, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added the last sentences of (a) and (c).

§ 49-7-31.3. Open season for game animals other than deer.

The open season on game animals except deer shall be as follows:

(a) On squirrel: The season shall open on October 1 and run through February 28 next following. In addition, the commission is authorized to set a season that shall open not earlier than May 15 and run not later than June 1 next following. When the open season ends on a Friday, the commission shall have the authority to extend the season until thirty (30) minutes after sunset on the following Sunday.

(b) On rabbits: The season shall open on the Saturday nearest October 15 and run through February 28 next following, and when rabbits are

depredating or destroying crops, the owner of the crops or his tenants may shoot the rabbits with guns. When the open season ends on a Friday, the commission shall have the authority to extend the season until thirty (30) minutes after sunset on the following Sunday.

HISTORY: Laws, 2005, ch. 529, § 3; Laws, 2014, ch. 388, § 1, eff from and after July 1, 2014; Laws, 2020, ch. 308, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2014 amendment deleted "(i) Zone 1: For areas north of Highway 82 plus those portions of Sunflower County and Washington County south of Highway 82" following "(a) On squirrel:" and "the Saturday nearest" following "The season shall open on"; deleted (a)(ii) Zone 2: and (a)(iii) Zone 3: in their entireties; and inserted "next following...June 1 next following" after "February 28."

The 2020 amendment added the last sentences of (a) and (b).

§ 49-7-31.4. Open season on fur-bearing animals; hunting raccoons and bobcats with dogs; additional open season on raccoons.

(1) The commission may fix the open season on fur-bearing animals between November 1 and March 15 next following and fix the open season for hunting opossums, raccoons and bobcats with dogs and guns by licensed hunters from October 1 to March 15 next following; but raccoons and bobcats may be run, hunted, chased or pursued throughout the year with dogs by licensed hunters.

(2) The commission may establish an additional open season on raccoon from July 1 through October 1, and the bag limit on raccoon during the additional open season shall be one (1) per party, per night.

(3) When the open season on fur-bearing animals, including any additional open season on raccoon, ends on a Friday, the commission shall have the authority to extend the season until thirty (30) minutes after sunset on the following Sunday.

HISTORY: Laws, 2005, ch. 529, § 6; Laws, 2014, ch. 391, § 1, eff from and after July 1, 2014; Laws, 2020, ch. 308, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2014 amendment substituted "March 15" for "March 1" and for "February 28" in (1).

The 2020 amendment added (3).

§ 49-7-31.5. Hunting, trapping and taking of nuisance animals; unlawful to trap certain animals outside of open season for fur-bearing animals; hunting nuisance animals with dogs, electronic calls, bait and lures authorized; exceptions; hunting wild hogs; penalties.

(1) The hunting, trapping and taking of nuisance animals shall be regulated by the commission. The commission may adopt regulations to regulate the hunting, trapping and taking of nuisance animals and to control the population of nuisance animals.

(2)(a) Landowners, agricultural leaseholders or their designated agents may take predatory and nuisance animals year-round on lands owned or leased by them.

(b) Landowners, agricultural leaseholders or their designated agents may take nuisance animals with any type of weapon and may take nuisance animals during the night after legal hunting hours on lands owned or leased by them with a permit issued by the department.

(c) No license is required for a resident landowner hunting or trapping nuisance animals on his own land. An agricultural leaseholder, designated agent and any other person must possess either an all-game hunting license or trapping license, unless otherwise exempt.

(d) No license is required for a recipient of the Purple Heart Medal for wounds suffered in combat, to hunt nuisance animals on private lands. Persons exempt from purchasing a hunting license under this paragraph shall have in their possession and on their person a copy of their DD-214 discharge form indicating the receipt of the Purple Heart Medal and any proof as may be required by the commission or the Department of Wildlife, Fisheries and Parks, while engaged in such activities.

(3) The taking of any animal or animals other than nuisance animals by the use of a trap or traps is unlawful except during the time the season is open for the taking of fur-bearing animals.

(4) Nuisance animals may be run, chased or pursued with dogs, except as provided in Section 49-7-32, year-round by licensed hunters.

(5) Nuisance animals may be hunted with the aid of electronic calls.

(6) Nuisance animals may be hunted or trapped with the aid of bait and lures, on private lands, according to regulations adopted by the commission.

(7) Any part of a nuisance animal may be bought and sold year-round.

(8)(a) Wild hogs may not be caught or trapped and released into the wild at a location different from the location where the wild hog was caught or trapped, or otherwise transported live in the State of Mississippi.

(b) A violation of this subsection is a Class I violation and is punishable as provided under Section 49-7-141.

(9) When hunting wild hogs during any open gun season on deer, a hunter must wear in full view at least five hundred (500) square inches of solid unbroken fluorescent orange.

HISTORY: Laws, 2005, ch. 529, § 7; Laws, 2006, ch. 522, § 3; Laws, 2007, ch. 499, § 2; Laws, 2014, ch. 510, § 1; Laws, 2015, ch. 308, § 1; Laws, 2017, ch. 434, § 1, eff from and after July 1, 2017; Laws, 2022, ch. 410, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2014 amendment added (9) and (11) and redesignated former (9) as present (10).

The 2015 amendment added (2)(d); and extended the repealer provision from "July 1, 2016" to "July 1, 2017."

The 2017 amendment deleted former (9), which related to the transportation or relocation of live wild hogs, redesignated former (10) as (9), and made a related change; and deleted former (11), which read: "This section shall stand repealed on July 1, 2017."

The 2022 amendment added "or otherwise transported live in the State of Mississippi" at the end of (8)(a).

§ 49-7-31.6. Velvet hunting season; special hunts during velvet hunting season outside of open season on deer.

(1) The Mississippi Commission on Wildlife, Fisheries and Parks shall establish and regulate special hunts during velvet hunting season, outside of the regular open season on deer. Velvet hunting season shall begin on September 10, and end no later than September 20, and shall be for no less than three (3) consecutive days in length, and for no more than five (5) consecutive days in length, and only hunting with bow and arrow or crossbows shall be allowed during such season. The special season shall be open on private lands and any Wildlife Management Areas as deemed appropriate by the department. Only bucks that meet the antler criteria for the respective deer management unit may be harvested. There shall be mandatory reporting of the harvested animal.

(2) The commission shall establish a special hunting permit for velvet hunting season. Such special hunting permit for velvet hunting season shall be authorized for a time period beginning on September 10, and ending no later than September 20, and shall be valid for no less than three (3) consecutive days in length, and for no more than five (5) consecutive days in length. The commission shall, set the cost of permits.

HISTORY: Laws, 2022, ch. 408, § 1, eff from and after July 1, 2022.

§ 49-7-37. Hunting of game with falcons or hawks, bow and arrow, primitive firearms, air guns, air bows or pre-charged pneumatic weapons; special open seasons on deer and small game; special season for collecting CWD testing samples; license fees; penalties.

(1) Any resident of this state licensed to hunt or otherwise take any legal game bird or game animal in this state by or with the use of firearms, may hunt, kill, shoot or otherwise take game animals or game birds by the use of falcons or hawks as may be prescribed by the commission and in compliance with federal guidelines.

(2)(a) The commission may extend the special archery seasons on any public hunting projects, game refuges or prescribed areas having surplus deer populations.

(b) The commission may declare a special season in any area of the state where the need to collect samples for testing for chronic wasting disease (CWD) is indicated. Special seasons for collecting CWD testing samples may be set within the open season or, if necessary, outside the open season. Lawful weapons for hunting during any special CWD sample collection season shall be consistent with the then-current open season or, if outside the open season, as directed by order of the commission.

(3) The killing by primitive firearms of an antlerless deer or any other deer protected during the regular deer season is prohibited, but the commission may designate areas of the state in which the killing of antlerless deer may be permitted or limited.

(4) The commission may make reasonable rules and regulations concerning the special seasons with falcons and hawks, bow and arrow, primitive firearms, air guns, air bows and pre-charged pneumatic weapons which it deems necessary and proper. The commission shall define the terms "primitive firearm," "air gun," "air bow" and "pre-charged pneumatic weapon" for purposes of this section and other law or regulation.

(5) Air guns shall be lawful for hunting small game during the seasons for hunting small game. Air bows and pre-charged pneumatic weapons shall be lawful for hunting large game, except game birds, turkeys and migratory waterfowl. Air bows and pre-charged pneumatic weapons may be used during any open season on deer with primitive weapons after November 30, on private lands only, consistent with the requirements of Section 49-7-31(5)(a).

(6) The use of dogs shall be prohibited for hunting deer during any of the special hunting seasons.

(7) In addition to a hunting license allowing the taking of deer, any resident desiring to hunt deer with bow and arrow or primitive firearm during primitive weapon or archery season or special hunts established by the commission shall purchase a special resident archery and/or primitive firearms license at a fee of Fourteen Dollars ($14.00) for each license plus the fee provided in Section 49-7-17.

(8) Any person violating this section is guilty of a Class II violation and shall be punished as provided in Section 49-7-143.

(9) All seasons provided for herein shall begin on Saturday.

HISTORY: Codes, 1942, § 5872.5; Laws, 1958, ch. 173, §§ 1-4; Laws, 1962, ch. 190; Laws, 1968, ch. 259, § 1; Laws, 1972, ch. 454, § 1; Laws, 1973, ch. 478, § 1; Laws, 1977, ch. 468, § 2; Laws, 1978, ch. 465, § 12; Laws, 1982, ch. 435, § 9; Laws, 1985, ch. 452, § 10; Laws, 1988, ch. 435, § 12; Laws, 1989, ch. 377, § 5; Laws, 1993, ch. 463, § 4; Laws, 1994, ch. 633, § 2; Laws, 2001, ch. 347, § 1; Laws, 2002, ch. 364, § 1, eff from and after July 1, 2002; Laws, 2022, ch. 418, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment added (2)(b); in (4), inserted "air guns, air bows and pre-charged pneumatic weapons" and made a related change, substituted "terms" for "term," and inserted "air gun," "air bow" and "pre-charged pneumatic weapon"; added (5); and redesignated former (5) through (8) as (6) through (9).

§ 49-7-38. Certain persons authorized to hunt with bow and arrow or crossbow during any open season on deer, turkey or small game.

(1) Any person who is exempt from having a hunting license and any person licensed to hunt deer with a bow or primitive weapon may hunt with a crossbow or bow and arrow during any open season on deer, turkey or small game.

(2) When hunting during any gun season on deer, the hunter must comply with Section 49-7-31.1.

HISTORY: Laws, 1985, ch. 340; Laws, 1994, ch. 398, § 1; Laws, 2000, ch. 343, § 1; Laws, 2004, ch. 532, § 1; Laws, 2005, ch. 525, § 1; Laws, 2008, ch. 468, § 1; Laws, 2013, ch. 343, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment rewrote the section, which read "(1) The commission may issue a special license to hunt deer, turkey and small game with a crossbow to any person sixty five (65) years of age or older or to any person having a disability which totally and permanently prevents the person from using a longbow or other conventional archery equipment as first certified by one (1) physician duly licensed to practice medicine in the state. The commission shall designate the fee for the license. The commission shall set the crossbow season for small game. A special licensee under this section may take deer or turkey with a crossbow during the respective seasons on deer and turkey. (2) The commission may issue a crossbow permit to hunt with a crossbow during the open seasons on deer with guns and primitive weapons. A person required to have a hunting license must have a license to take deer and turkey in order to obtain a crossbow permit. The commission shall establish a fee for the permit."

§ 49-7-39. Special hunt for youth and persons with disabilities in Natchez State Park; primitive weapon season in Natchez State Park; commission may establish such hunts in other state parks; commission may authorize special youth hunts for nonmigratory birds; special hunting season for youth to run concurrently with primitive weapon season on deer.

Editor's Notes — Section 55-3-85 changed the name of the Natchez State Park, referenced in this section, to the "Bob M. Dearing Natchez State Park."

§ 49-7-41. Bag limits.

(1) The commission may set the bag limits for game animals, birds and fish, unless the bag limits are established by the Legislature by statute.

(2) The commission shall have plenary authority to set the bag limits for white-tailed deer, and promulgate any regulations necessary to facilitate the exercise of that authority, consistent with best management practices, scientific data and subject to all existing applicable laws, rules and regulations of this state or the United States of America.

(3) The bag limit on antlerless deer set by the commission as authorized in this section shall not apply to private lands under the deer management assistance program or the fee-based antlerless program as approved by the department.

HISTORY: Codes, 1942, § 5908; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1956, ch. 153; Laws, 1966, ch. 266, § 1; Laws, 1970, ch. 288, § 1; Laws, 1975, ch. 375; Laws, 1990, ch. 448, § 1; Laws, 1992, ch. 453, § 2; Laws, 1994, ch. 633, § 3; Laws, 1995, ch. 592, § 2; Laws, 1999, ch. 502, § 1; Laws, 2000,

ch. 527, § 1; Laws, 2003, ch. 368, § 1; Laws, 2005, ch. 522, § 1; Laws, 2009, ch. 510, § 2; Laws, 2014, ch. 306, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, rewrote (2), deleted former (3), and redesignated former (4) as present (3).

§ 49-7-53. Shipment and other transportation of game birds, animals or fish.

(1) It is unlawful for any railroad, express company or common carrier to knowingly receive for shipment or to ship any game animals, birds, or fish named in this chapter; except that a railroad, express company or common carrier may receive and carry game animals, birds or fish when accompanied by the hunter killing same and as provided otherwise in this chapter.

(2) No person or corporation may ship, transport or carry, cause to be shipped, transported or carried, or receive for shipment, transportation or carriage, or have in his possession with intent to ship, transport or carry, or secure the shipment, transportation or carriage beyond the limits of this state, any game animal, bird or fish, except for the following in accordance with rules and regulations promulgated by the commission:

(a) Rabbits;

(b) The furs or pelts of beaver, opossum, otter, raccoon or other fur-bearing animals during the open season and thirty (30) days thereafter;

(c) Skins and sinew of deer and products crafted, fashioned or made from deer bones or antlers not in velvet;

(d) Game fish produced in a legally permitted aquaculture facility pursuant to Section 79-22-9;

(e) Any part of a wild turkey, except the meat; and

(f) The meat, hide or any other body parts of nuisance animals.

(3) The offering or reception by any person or corporation within this state of any such birds, animals or fish for shipment from this state shall be prima facie evidence that such birds, animals or game fish were killed, captured or taken within the state. Each game animal, bird or fish in possession, received for shipment or transportation, or shipped or transported in violation of this section is a separate offense.

(4) A nonresident licensee during the open season may ship, transport or carry from this state any game animal, bird or fish lawfully taken but not in excess of the bag and possession limits prescribed in Section 49-7-41.

Such nonresident licensee shall accompany the shipment or shall attach to such animals, birds or fish, or any package containing them, an affidavit in a form to be prescribed by the executive director that such animals, birds or fish were lawfully killed or taken by him and are being shipped or transported to his home and are not for sale. A duplicate of such affidavit shall be filed with the transportation company or agent thereof, whose duty it shall be to transmit the same to the executive director within ten (10) days after its receipt. Such affidavit shall be sworn to within ten (10) days after its receipt, and shall be sworn to before a person authorized to administer oaths in the state. For such

purpose, conservation officers and agents of the transportation companies are hereby authorized to administer such oaths.

(5) A violation of this section is a Class I violation and is punishable as provided in Section 49-7-141.

HISTORY: Codes, 1942, § 5886; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1974, ch. 569, § 20; Laws, 1983, ch. 323, § 2; Laws, 1985, ch. 452, § 4; Laws, 1990, ch. 336, § 1; Laws, 1995, ch. 339, § 2; Laws, 1997, ch. 370, § 2; Laws, 2002, ch. 427, § 2; Laws, 2007, ch. 479, § 2; Laws, 2013, ch. 514, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment substituted "thirty (30) days" for "ten (10) days" in (2)(b).

§ 49-7-56. Restaurants permitted to prepare and serve recreationally caught finfish to persons who caught the fish.

It is lawful for any restaurant to possess, prepare and serve lawfully, recreationally caught marine finfish to the persons who caught the finfish.

HISTORY: Laws, 2014, ch. 418, § 1, eff from and after July 1, 2014.

§ 49-7-58.1. Regulation of enclosures preventing free egress of white-tailed deer.

(1) The owner of any enclosure containing white-tailed deer that prevents the free egress of white-tailed deer from the enclosed area shall notify and register with the Department of Wildlife, Fisheries and Parks. The person shall give his name, the location of the enclosure, the acreage within the enclosure, and whether any deer have been imported into the state and placed in the enclosure, and any other information required by the Commissioner on Wildlife, Fisheries and Parks.

(2) Persons who constructed an enclosure prior to July 1, 2003, shall have until January 1, 2004, to notify and provide the information required under this section. The person shall use acceptable hunting and wildlife management practices as may be determined by the department.

(3) The owner of such an enclosure shall comply with all rules and regulations promulgated by the Commission on Wildlife, Fisheries and Parks for the testing of white-tailed deer harvested within an enclosure, or whose death was due to causes other than hunting activity, as required by Section 49-7-58.6. If chronic wasting disease is diagnosed within five (5) miles of the enclosure, the owner of such enclosure shall allow department personnel to enter the enclosure to utilize the best collection methods possible to obtain tissue samples for testing. If chronic wasting disease is diagnosed within the enclosure, the owner shall work with the commission to determine a solution for containing the disease within the enclosure; however, the commission shall not declare surrounding or adjoining properties within a five (5) mile radius of

the enclosure a CWD Management Zone, until chronic wasting disease is positively detected within such radius on these surrounding or adjoining properties.

(4) Violations of this section shall be punishable as provided in Section 49-7-58.6.

HISTORY: Laws, 2003, ch. 516, § 7; Laws, 2007, ch. 516, § 3, eff from and after July 1, 2007; Laws, 2020, ch. 307, § 3, eff from and after July 1, 2020; Laws, 2021, ch. 426, § 3, eff from and after passage (approved April 9, 2021).

Amendment Notes — The 2020 amendment in (3), substituted "as required by Section 49-7-58.5" for "as may be required by the department."

The 2021 amendment, effective April 9, 2021, rewrote (3) and (4), which read: "(3) The owner of such an enclosure shall comply with any testing of white-tailed deer harvested within the enclosure as required by Section 49-7-58.5. If chronic wasting disease is diagnosed within five (5) miles of the enclosure, the owner of such enclosure shall allow department personnel to enter the enclosure to utilize lethal collection methods to obtain tissue samples for testing. If chronic wasting disease is diagnosed within the enclosure, the owner shall allow department personnel to enter the enclosure and depopulate the white-tailed deer within the enclosure. (4) A violation of this section is a Class I violation and is punishable as provided in Section 49-7-141."

§ 49-7-58.2. Program of inspecting, monitoring, testing and preventing chronic wasting disease.

(1) The Department of Wildlife, Fisheries and Parks shall develop and implement a program for inspecting, monitoring, testing and preventing chronic wasting disease. The Commission on Wildlife, Fisheries and Parks shall promulgate rules and regulations to effect the sampling of deer harvested, or dying from, nonhunting related causes, within an enclosure. If chronic wasting disease is diagnosed in white-tailed deer within an enclosure, the department is authorized to use methods authorized by the commission and enter the enclosure to determine a solution for containing the disease within the enclosure. If chronic wasting disease is diagnosed within five (5) miles of the enclosure, the department is authorized to enter the enclosure and utilize the best collection methods available to obtain tissue samples. If chronic wasting disease is detected within an enclosure, the commission shall not declare surrounding or adjoining properties within a five (5) mile radius of the enclosure a CWD Management Zone, until chronic wasting disease is positively detected within such radius on these surrounding or adjoining properties.

(2) If a live test for chronic wasting disease is developed, the department is authorized to conduct such tests on white-tailed deer within any enclosure.

HISTORY: Laws, 2003, ch. 516, § 8, eff from and after passage (approved Apr. 19, 2003); Laws, 2020, ch. 307, § 4, eff from and after July 1, 2020; Laws, 2021, ch. 426, § 4, eff from and after passage (approved April 9, 2021).

Amendment Notes — The 2020 amendment deleted the former second sentence of (1), which read: "The Department of Wildlife, Fisheries and Parks is authorized to

require the chronic wasting disease testing of white-tailed deer harvested within any enclosure."

The 2021 amendment, effective April 9, 2021, in (1), added the second sentence, rewrote the third sentence, which read: "If chronic wasting disease is diagnosed in white-tailed deer within an enclosure, the department is authorized to enter the enclosure and depopulate the white-tailed deer within the enclosure," in the fourth sentence, substituted "utilize the best collection methods available to obtain" for "utilize lethal collection methods to obtain," and added the last sentence.

Cross References — Testing of certain white-tailed deer for CWD required, see § 49-7-58.5.

§ 49-7-58.3. Regulation of hunting of nonnative cervids in noncommercial wildlife enclosures.

(1) The commission may regulate the hunting of nonnative cervids in noncommercial wildlife enclosures, and the Department of Wildlife, Fisheries and Parks may enforce such regulations and laws in the same manner as commercial wildlife enclosures as provided in Section 49-11-25.

(2) A violation of this section is a Class I violation and punishable as provided in Section 49-7-141.

HISTORY: Laws, 2003, ch. 516, § 10; reenacted and amended, Laws, 2005, ch. 530, § 1; Laws, 2007, ch. 399, § 1; Laws, 2009, ch. 523, § 1; Laws, 2012, ch. 326, § 1; Laws, 2012, ch. 422, § 1; Laws, 2014, ch. 305, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted (3), which read: "This section shall repeal on July 1, 2014."

§ 49-7-58.4. Regulation of commercial and noncommercial wild animal enclosures and facilities preventing free ingress and egress of native and nonnative cervids.

(1) The Commission on Wildlife, Fisheries and Parks and the Department of Wildlife, Fisheries and Parks shall have plenary power to regulate all commercial and noncommercial wild animal enclosures in order to conserve and protect native wildlife for all citizens to enjoy and to protect our recreational economy dependent on native wildlife resources.

(2) The Commission on Wildlife, Fisheries and Parks shall regulate any facility that prevents the free ingress and egress of native or nonnative cervids as the same are defined by the commission. The commission may promulgate rules and regulations requiring the issuance of permits and the payment of a reasonable fee therefor. Regulations promulgated under this authority must have a majority vote of the commission to be adopted.

HISTORY: Laws, 2006, ch. 601, § 1; Laws, 2009, ch. 523, § 2; Laws, 2012, ch. 326, § 2; Laws, 2014, ch. 305, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted (3), which read: "This section shall repeal on July 1, 2014."

§ 49-7-58.5. Repealed.

Repealed by Laws, 2021, ch. 426, § 5, eff from and after passage (approved April 9, 2021).

§ 49-7-58.5. [Laws, 2020, ch. 307, § 1, eff from and after July 1, 2020.]

Editor's Notes — Former § 49-7-58.5 required that white-tail deer harvested within any enclosure be tested for chronic wasting disease (CWD) and imposed Class I and Class II violation penalties for first and subsequent violations. For present provisions relating to CWD testing of white-tailed deer, see § 49-7-58.6.

§ 49-7-58.6. Testing of certain white-tailed deer for chronic wasting disease (CWD) required; submission of testing samples; declaration of a CWD Management Zone; penalties for violations.

(1)(a) White-tailed deer harvested within any enclosure shall be tested for chronic wasting disease (CWD).

(b) The Commission on Wildlife, Fisheries and Parks shall promulgate rules and regulations requiring the annual submission of viable samples from harvested deer for chronic wasting disease testing. Rules promulgated under this paragraph shall require a minimum submission from inside a high-fenced enclosure representing at least one (1) deer per each two hundred (200) acres of land under fence.

(c) In addition to samples submitted from deer harvested within an enclosure, to the extent possible, enclosure owner/operators shall submit viable samples collected from any deer that dies inside an enclosure from causes other than being harvested by hunting, for chronic wasting disease testing.

Samples collected from deer whose death occurred for reasons other than hunting shall count toward the total number of required samples.

(2) If chronic wasting disease is detected within an enclosure, as defined in Section 49-7-58.1, the commission shall not declare surrounding or adjoining properties within a five (5) mile radius of the enclosure a CWD Management Zone, until chronic wasting disease is positively detected within such radius on these surrounding or adjoining properties.

(3) Failure to submit samples pursuant to the rules and regulations promulgated by the commission shall be a violation of those regulations. A first violation of such regulations shall be punishable by a fine of Five Hundred Dollars ($500.00). Each second or subsequent violation shall be punishable by a fine of One Thousand Dollars ($1,000.00).

HISTORY: Laws, 2021, ch. 426, § 1, eff from and after passage (approved April 9, 2021).

§ 49-7-65. Unlawful to hunt, when.

Except as provided in this chapter, it is unlawful for any person to hunt, trap, take, kill, wound or capture, or attempt to hunt, trap, take, kill, wound or capture any fur-bearing animals except during the open season prescribed by law or regulation. However, mink may be hunted with dogs during the season for taking of fur-bearing animals on payment of trapper's license fee by person so hunting mink with dogs.

HISTORY: Codes, 1942, § 5888; Laws, 1932, ch. 123; Laws, 1954, ch. 176, § 1; Laws, 2005, ch. 489, § 2; Laws, 2013, ch. 514, § 3, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment deleted "or to have in his possession the green pelt of any such animal except during the open season and ten (10) days after the close of the open season" at the end of the first sentence.

§ 49-7-95. Killing deer by headlighting or other lighting devices; killing livestock; harassment of wildlife; penalties.

JUDICIAL DECISIONS

1. In general.

Evidence was sufficient to show that defendant committed an overt act within the meaning of Miss. Code Ann. § 49-7-95(1)(b) (Rev. 2012) where the testimony showed possession of a recently killed deer, the deer could not have been killed during legal hunting hours, and defendant shot the deer, and defendant admitted headlighting deer. Crockett v. State, 212 So. 3d 763, 2017 Miss. LEXIS 9 (Miss. 2017).

§ 49-7-140. Importation, release and transportation of wild hogs prohibited; penalty.

(1) No person may import into the state or release into the wild, any live feral hog, wild swine or Russian Boar.

(2) No person may transport on public roads or off of the property of record where captured or relocate within the state any live feral hog, wild swine or Russian Boar.

(3) For the purposes of this section, "feral hogs, wild swine or Russian Boar" are defined as any hog that is not a domesticated pet or livestock.

(4) A violation of this section is a Class I violation punishable as provided in Section 49-7-141.

(5) Nothing in this section shall be construed to prohibit the lawful transport of domestic swine for customary and ordinary purposes of intrastate or interstate commerce, or agricultural practices.

HISTORY: Laws, 1994, ch. 412, § 1; Laws, 2005, ch. 384, § 1; Laws, 2010, ch. 521, § 1; Laws, 2014, ch. 510, § 2; Laws, 2016, ch. 454, § 1, eff from and after July 1, 2016; Laws, 2022, ch. 410, § 2, eff from and after July 1, 2022.

Amendment Notes — The 2014 amendment rewrote (2), which read: "No person may transport or relocate within the state any live feral hog, wild swine or Russian

Boar and release the hog into the wild" deleted "and 'released into the wild' is defined as being able to move about freely to adjoining land" from the end of (3); and added (5), (6), and (7).

The 2016 amendment substituted "Class I violation and punishable as provided in Section 49-7-141" for "Class II violation, per each animal in violation, and punishable as provided in Section 49-7-143" in (5)(c); and deleted (7), which read: "This section shall stand repealed on July 1, 2016."

The 2022 amendment, in (2), deleted "except as permitted by the department" from the end; deleted former (5), which allowed the capture or trapping and transportation of wild hogs with a permit, prohibited the release of wild hogs except under certain conditions, and provided penalties for violations; and redesignated former (6) as (5).

§ 49-7-141. Penalties; Class I violations.

Cross References — Imposition of additional assessment against defendant convicted of Class I violation to cover costs of investigations, see § 99-19-77.

BEAVER CONTROL PROGRAM

Sec.

49-7-201. Beaver and wild hog control program established; funding; county contributions; "participating landowner" defined.

49-7-203. Beaver and Wild Hog Control Advisory Board created; composition of board; compensation of members; duties, responsibilities and authority of board.

§ 49-7-201. Beaver and wild hog control program established; funding; county contributions; "participating landowner" defined.

(1) There is established a beaver and wild hog control program which shall be developed by the Beaver and Wild Hog Control Advisory Board created in Section 49-7-203 and administered by the Mississippi Department of Agriculture and Commerce with the advice of the board or administered by a federal agency or agencies under an agreement with the board for that purpose. The program shall be limited to the control or eradication of beavers and wild hogs only on private lands or public lands, excluding federally owned lands but including lands whereupon easements are granted to a federal entity. The board may employ any personnel as is necessary to implement its duties to administer the program and set the salary of the personnel subject to State Personnel Board guidelines.

(2) Any state, local or private funds available to the board to fund the program shall be used to match federal funds available for such purpose. The board may execute any agreements with any agency of the federal government as are necessary to obtain federal matching funds to finance the beaver and wild hog control program. State funds may be expended for wild hog control only by a specific line-item appropriation by the Legislature for that purpose.

(3) Nonfederal funds to help finance the program may be obtained by the board from the following sources:

(a) Appropriations by the Legislature; state funds may be expended for wild hog control only by a specific line-item appropriation by the Legislature for that purpose.

(b) Contributions from participating counties;

(c) Charges on participating landowners; and/or

(d) Contributions from any other sources for such purpose.

(4)(a) Any county in the state desiring to participate in the program during its fiscal year shall contribute an amount established by the Beaver and Wild Hog Control Advisory Board for such purpose from any funds available in its general fund. The amount established by the advisory board shall be the minimum annual contribution required for a county to participate in the program. The minimum required contribution must be approved by three-fourths (¾) of the advisory board members present and voting. In addition, a county may contribute an amount in excess of the minimum required contribution for administration of the beaver and wild hog control program in that county from any revenues available. The board shall establish the due date for the payment of contributions by counties.

(b) The sum of county contributions may be matched by nonfederal funds available to the state for the beaver and wild hog control program.

(5) Participating landowner means any person, corporation or association owning land in this state and taking part in the beaver and wild hog control program.

HISTORY: Laws, 1989, ch. 402, § 1; Laws, 2000, ch. 516, § 75; Laws, 2002, ch. 428, § 1; Laws, 2009, ch. 514, § 1; Laws, 2013, ch. 440, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment inserted "and wild hog" following "beaver" and "and wild hogs" following "beavers" throughout; added the last sentence in (2); added "state funds may be expended for wild hog control only by a specific line-item appropriation by the legislature for that purpose" at the end of (3)(a).

§ 49-7-203. Beaver and Wild Hog Control Advisory Board created; composition of board; compensation of members; duties, responsibilities and authority of board.

(1) There is created the Beaver and Wild Hog Control Advisory Board which shall be composed of the administrative heads of the Mississippi Department of Wildlife, Fisheries and Parks, State Forestry Commission, Department of Agriculture and Commerce, Mississippi Department of Transportation and Mississippi State Cooperative Extension Services, the Executive Director of the Mississippi Association of Supervisors, the Executive Vice President of Delta Council and the President of the Mississippi Farm Bureau Federation. In addition, the board shall include, as advisory, and nonvoting members:

(a) The Chairmen of the House and Senate Wildlife, Fisheries and Parks Committees;

(b) The Chairmen of the House and Senate Agriculture Committees; and

(c) One (1) at-large member of the House and Senate appointed by the Lieutenant Governor and Speaker of the House.

(2) The board shall elect a chairman from among its members, who shall preside over meetings.

(3) The members of the board shall serve without compensation but all members of the board shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by law.

(4) The board shall have the following duties and responsibilities:

(a) To adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business;

(b) To develop a beaver and wild hog control program to be administered by the Mississippi Department of Agriculture and Commerce or by any agency or agencies under an agreement with the board for that purpose;

(c) To designate the areas of the state having the greatest need for beaver and wild hog control or eradication and establish a list of priority areas on an annual basis;

(d) To establish, assess and collect any fees charged to participating landowners; and

(e) To function in an advisory capacity to the Mississippi Department of Agriculture and Commerce or any agency or agencies administering the beaver and wild hog control program.

(5) The board shall have the authority to develop any programs and implement any regulations and policies. The board may develop what it deems necessary to address beaver and wild hog control within the state.

HISTORY: Laws, 1989, ch. 402, § 2; Laws, 2000, ch. 516, § 76; Laws, 2002, ch. 428, § 2; Laws, 2003, ch. 390, § 1; Laws, 2009, ch. 514, § 2; Laws, 2013, ch. 440, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment inserted "and Wild Hog" in the first sentence of (1); added (1)(b) and made related changes; and inserted "and wild hog" following "beavers" throughout.

WOUNDED WARRIOR SPECIAL PROGRAMS

Sec.

49-7-351. Wounded warrior special programs: establishment of special seasons within wildlife management areas and refuges for hunting, fishing and other recreational activities for eligible veterans and active duty service members.

§ 49-7-351. Wounded warrior special programs: establishment of special seasons within wildlife management areas and refuges for hunting, fishing and other recreational activities for eligible veterans and active duty service members.

(1) The purpose of this section is to honor wounded veterans and active

duty service members by providing hunting, fishing and other recreational opportunities for them in state wildlife management areas and wildlife refuges.

(2) As used in this section, the term:

(a) "Active duty" means full-time duty in the Armed Forces, Reserves or National Guard during wartime service as defined by the United States Congress.

(b) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force and Coast Guard.

(c) "National Guard" means the Army National Guard and the Air Force National Guard of the United States.

(d) "Reserves" means the Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve and Coast Guard Reserve.

(3) The Commission on Wildlife, Fisheries and Parks may designate an area or areas or establish special seasons within wildlife management areas and wildlife refuges for hunting, fishing and other recreational activities for eligible veterans and active duty service members to be known as "Wounded Warrior Special Programs."

(4) The designated areas or special seasons shall be open to a person who:

(a) Is an active duty member of the Armed Forces, National Guard or Reserves and has a combat-related physical injury as determined by the member's branch of service; or

(b) Is a veteran member of the Armed Forces, National Guard or Reserves who served on active duty during a period of war as defined by the United States Congress, and:

(i) Has a service-connected physical disability as determined by the United States Department of Veterans Affairs; or

(ii) Was discharged or released from military service because of a physical disability acquired or aggravated while serving on active duty during a period of war.

(5) The department may allow one (1) person to accompany an eligible veteran or active duty service member who requires assistance to hunt, fish or participate in the recreational activity.

(6) The commission may adopt any rules and regulations deemed necessary to administer this section.

HISTORY: Laws, 2013, ch. 463, § 1, eff from and after July 1, 2013.

CHAPTER 11.

PRIVATE SHOOTING PRESERVES

Sec.

49-11-3. Persons to whom operating licenses may be issued; area and other requirements; regulatory authority.

§ 49-11-3. Persons to whom operating licenses may be issued; area and other requirements; regulatory authority.

(1) The department may issue operating licenses to any person, partnership, association or corporation for the operation of shooting preserves or commercial wildlife enclosures that meet the following requirements and any applicable regulations:

(a) Each shooting preserve shall contain a minimum of one hundred (100) acres in one (1) tract of leased or owned land (including water area, if any) and shall be restricted to not more than six hundred forty (640) contiguous acres (including water area, if any), except that preserves confined to the releasing of ducks only may be authorized to operate with a minimum of fifty (50) contiguous acres (including water area).

(b) The boundaries of each shooting preserve shall be clearly defined and posted with signs erected at intervals of three hundred (300) feet or less.

(c) Each commercial wildlife enclosure shall contain a minimum of three hundred (300) acres in one (1) tract of leased or owned land (including water area, if any). No commercial wildlife enclosure shall be constructed in such a manner as to allow ingress of native wild animals without providing means of egress.

(d) The preserve or enclosure must be privately owned and operated.

(2) The commission may issue any rules or regulations necessary to regulate shooting preserves and commercial wildlife enclosures and to enforce this chapter.

(3) The commission may regulate the hunting of nonnative cervids within a commercial wildlife enclosure, and the department may enter such enclosure as provided under Section 49-11-25 and enforce such regulations.

HISTORY: Codes, 1942, § 5899-02; Laws, 1962, ch. 182, § 2; Laws, 1979, ch. 375, § 1; Laws, 1997, ch. 546, § 2; Laws, 2003, ch. 516, § 9; reenacted and amended, Laws, 2005, ch. 530, § 2; Laws, 2007, ch. 399, § 2; Laws, 2009, ch. 523, § 3; Laws, 2012, ch. 326, § 3; Laws, 2012, ch. 422, § 2; Laws, 2014, ch. 305, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (3), deleted the "(a)" designation, and deleted (b), which read: "This subsection (3) shall repeal on July 1, 2014."

CHAPTER 15.

SEAFOOD

Article 1.	General Provisions.	49-15-1
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ARTICLE 1.

GENERAL PROVISIONS.

Sec.

49-15-1.1. Assent to Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act.

49-15-9. Rights of riparian owners on Gulf Coast defined.

49-15-11. Mississippi Department of Marine Resources; transfer of certain powers and duties from Department of Wildlife, Fisheries and Parks; Executive Director of the Department of Marine Resources; definition of terms; composition of department; personnel to be appointed by executive director.

49-15-15. Powers and duties of Department of Marine Resources regarding regulation of seafood.

49-15-17. Seafood Fund; special accounts; sources of funds.

49-15-21. Enforcement officers; reserve unit.

49-15-25. Advisory council may be appointed by department.

49-15-27. Department granted authority to lease bottoms.

49-15-28. Seafood dealer license; seafood processor license; fees; applicability of section.

49-15-30. Commission may promulgate regulations for nonresident permits, reciprocity; penalties.

49-15-36. Oyster reefs and bottoms; rotating opening; closing of oyster reefs; special permits for taking oysters during closed season; depuration.

49-15-40. Projects to create or establish new oyster beds; molluscan depuration facilities; lease of water bottoms to political subdivisions.

49-15-40.1. Pilot program for bottom land leasing for oyster production.

49-15-41. Oysters not to be caught at night.

49-15-46. Licensing and fees for vessels engaged in catching, taking, carrying or transporting oysters; licensing and fees for molluscan shellfish aquaculture operation; transfer of vessel license; tagging of oysters harvested; recreational oyster permits; shell retention fees; authority to keep certain number of blue crabs for personal consumption.

49-15-49. Pass Christian Harbor oyster check station named the Colonel George J. Wright, Sr., building.

49-15-63. Penalties.

49-15-64.1. Shrimp season: waters closed to shrimping.

49-15-64.5. Boats used for catching or transporting saltwater shrimp; licensing and fees.

49-15-78. Prohibition against using gill net, trammel net, entanglement net, or like contrivance for taking finfish within half a mile of the shoreline; prohibition against using haul seine net for taking fish within half a mile of Cat Island; punishment.

§ 49-15-1.1. Assent to Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act.

The State of Mississippi hereby assents to the provisions of the Pittman-Robertson Wildlife Restoration Act [16 USCS Section 699 et seq.] and the

Dingell-Johnson Sport Fish Restoration Act [16 USCS Section 777 et seq.]. The Commission on Marine Resources may perform any acts as may be necessary to ensure the conservation of fish and marine life. Revenue from saltwater license sales shall be controlled only by the Department of Marine Resources and used only when exercising responsibilities specific to the management of the state's fish and marine resources for which the department has authority under state law.

HISTORY: Laws, 2013, ch. 503, § 1, eff from and after passage (approved April 22, 2013).

§ 49-15-9. Rights of riparian owners on Gulf Coast defined.

The sole right of planting, cultivating in racks or other structures, and gathering oysters and erecting bathhouses and other structures in front of any land bordering on the Gulf of Mexico or Mississippi Sound or waters tributary thereto belongs to the riparian owner and extends not more than seven hundred fifty (750) yards from the shore, except for state-owned lands on Deer Island, which shall be not more than four hundred (400) yards from shore, measuring from the average low water mark, but where the distance from shore to shore is less than fifteen hundred (1500) yards, the owners of either shore may plant and gather to a line equidistant between the two (2) shores, but no person shall plant in any natural channel so as to interfere with navigation, and such riparian rights shall not include any reef or natural oyster bed and does not extend beyond any channel. A riparian owner shall comply with the Coastal Wetlands Protection Act in exercising the use of these riparian rights. Stakes of such frail materials as will not injure any watercraft may be set up to designate the bounds of the plantation, but navigation shall not be impeded thereby. The riparian owner shall clearly mark such cultivation racks and other structures. The commission may adopt regulations to require that the racks are adequately marked to ensure the safety of users of public waters. Any oysters planted by such riparian owner are the private property of such riparian owner, subject to the right of the commission to adopt reasonable rules and regulations as to the planting and gathering of such oysters. All bathhouses, piers, wharfs, docks and pavilions, or other structures owned by riparian owner are likewise the private property of such owner, who shall be entitled to the exclusive use, occupancy and possession thereof, and may abate any private or public nuisance committed by any person or persons in the area of his riparian ownership and may, for such purposes, resort to any remedial action authorized by law. The governing authorities of any municipality and the board of supervisors of any county are authorized to adopt reasonable rules and regulations to protect riparian owners in the enjoyment of their riparian rights, and for such purposes may regulate the use of beaches, landings, and riparian areas abutting or fronting on roads, streets or highways.

HISTORY: Codes, 1942, § 6047-10; Laws, 1960, ch. 173, § 10; Laws, 1962, ch. 193, § 10; Laws, 1991, ch. 438 § 1, eff from and after passage (approved March 21, 1991); Laws, 2020, ch. 319, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment inserted "except for state-owned lands on Deer Island, which shall be not more than four hundred (400) yards from shore" in the first sentence.

JUDICIAL DECISIONS

1. Littoral rights.

Because riparian and littoral rights were not "real estate" but revocable licenses, a property owner could not gain standing for an action of inverse condemnation from an allegation of their infringement. Russell Real Prop. Servs., LLC v. State, 200 So. 3d 426, 2016 Miss. LEXIS 384 (Miss. 2016).

§ 49-15-11. Mississippi Department of Marine Resources; transfer of certain powers and duties from Department of Wildlife, Fisheries and Parks; Executive Director of the Department of Marine Resources; definition of terms; composition of department; personnel to be appointed by executive director.

(1) The Mississippi Department of Marine Resources is hereby established and full power is vested in the department to manage, control, supervise, enforce and direct any matters pertaining to saltwater aquatic life and marine resources under the jurisdiction of the commission.

(2) The Executive Director of the Department of Marine Resources shall have the authority to internally reorganize the Department of Marine Resources. For a period of six (6) months after April 16, 2014, the personnel actions of the executive director shall be exempt from State Personnel Board rules, regulations and procedures in order to give the executive director flexibility in making an orderly, effective and timely reorganization of the Department of Marine Resources.

(3) The department shall be composed of the following offices:

(a) Office of Coastal Resources Management;

(b) Office of Finance and Administration;

(c) Office of Marine Fisheries;

(d) Office of Marine Patrol; and

(e) Office of Coastal Restoration and Resiliency.

Each office shall be composed of the administrative units as set forth in the reorganization plan developed by the executive director.

(4) The following agency personnel shall be appointed by the executive director:

(a) Chief Financial Officer who shall have a minimum of a master's degree in business administration, accounting or related field and a minimum of five (5) years' experience in business management or accounting practice or who shall be a Certified Public Accountant.

(b) Chief of Marine Patrol who shall be a certified law enforcement officer with a minimum of ten (10) years of law enforcement experience.

(c) Chief Scientific Officer who shall have a minimum of a master's

degree in coastal sciences or related field with a minimum of five (5) years of experience in coastal resource management or equivalent experience.

(5) The executive director shall have an annual audit of the department, including the accounts established in Section 49-15-17, performed by an independent certified public accountant and shall file the audit report with the commission, the Chairman of the Senate Ports and Marine Resources Committee, the Chairman of the House Marine Resources Committee, the State Auditor and the Legislative Budget Office.

(6) Whenever the terms "Mississippi Marine Conservation Commission," "Marine Conservation Commission," "Bureau of Marine Resources" and "Mississippi Marine Resources Council" appear in any state law, they shall mean the Mississippi Advisory Commission on Marine Resources, which shall operate only as an advisory commission to the Department of Marine Resources.

HISTORY: Codes, 1942, § 6047-04; Laws, 1960, ch. 173, § 4; Laws, 1964, ch. 245, § 1; Laws, 1974, ch. 572, § 2; Laws, 1978, ch. 484, § 24; Laws, 1993, ch. 603, § 3; Laws, 1994, ch. 578, § 3; Laws, 1999, ch. 585, § 2; Laws, 2014, ch. 496, § 1, eff from and after passage (approved Apr. 16, 2014); Laws, 2020, ch. 418, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2014 amendment substituted "six (6) months after April 16, 2014" for "one (1) year after July 1, 1994" in the second sentence of (2); added (3), (4), and (5) and redesignated former (3) as present (6).

The 2020 amendment, in (4)(a), added "or who shall be a Certified Public Accountant"; and in (6), inserted "Advisory" and added "which shall operate only as an advisory commission to the Department of Marine Resources."

§ 49-15-15. Powers and duties of Department of Marine Resources regarding regulation of seafood.

(1) In addition to any other powers and duties authorized by law, the department, with the advice of the advisory commission, shall have the following powers and duties regarding the regulation of seafood:

(a) To exercise full jurisdiction and authority over all marine aquatic life and to regulate any matters pertaining to seafood, including cultivated seafood;

(b) To adopt, promulgate, amend or repeal, after due notice and public hearing, in accordance with the Mississippi Administrative Procedures Law and subject to the limitations in subsection (2) of this section, rules and regulations authorized under this chapter, including, but not limited to, rules and regulations necessary for the protection, conservation or propagation of all seafood in the waters under the territorial jurisdiction of the State of Mississippi and for the regulation of gill net and purse seine fishermen. All public hearings under this chapter concerning the regulation of marine resources shall be held in Hancock, Harrison or Jackson Counties. Each rule or regulation promulgated under this chapter shall immediately be advertised one (1) time in a newspaper or newspapers having general circulation

in counties affected by that regulation. A regulation shall become effective at 6:00 a.m. on the day after its publication;

(c) To regulate all seafood sanitation and processing programs. In the three (3) coastal counties, the sanitation program regulating processing plants and seafood sold in retail stores operating in conjunction with a processing plant or seafood market that primarily deals with seafood is under the exclusive authority of the department. The department may also inspect and regulate those areas of any seafood processing plant which process freshwater species at any site. To effectively and efficiently implement the state seafood sanitation program, the State Health Officer, the Commissioner of Agriculture and the executive director of the department may enter into a memorandum of understanding, which at a minimum, clearly specifies the responsibilities of each agency in implementing the seafood sanitation program, as well as the sharing of information and communication and coordination between the agencies;

(d) To set standards of measure;

(e) To set requirements for employment of commission employees whose compensation shall be governed by the rules and regulations of the State Personnel Board;

(f) To acquire and dispose of commission equipment and facilities;

(g) To keep proper records of the commission, including an official ordinance book which contains all rules and regulations promulgated by the department, with the advice of the advisory commission, under this chapter;

(h) To enter into advantageous interstate and intrastate agreements with proper officials, which directly or indirectly result in the protection, propagation and conservation of the seafood of the State of Mississippi, or continue any such agreements now in existence;

(i) To arrange, negotiate or contract for the use of available federal, state and local facilities which would aid in the propagation, protection and conservation of the seafood of the State of Mississippi;

(j) To authorize the operation of double rigs in the waters lying between the mainland coast and the island chain, and those rigs shall not exceed a length of twenty-five (25) feet at the corkline, and to prescribe the length at the lead line for each rig, net or try-trawl;

(k) To destroy or dispose of equipment or nets which have been lawfully seized by the commission and which are not sold under Section 49-15-201 et seq.;

(*l*) To open, close and regulate fishing seasons for the taking of shrimp, oysters, fish taken for commercial purposes and crabs and set size, catching and taking regulations for all types of seafood and culling regulations for oysters, except as otherwise specifically provided by law;

(m) To utilize the resources of the Gulf Coast Research Laboratory to the fullest extent possible;

(n) To develop a resource management plan to preserve seafood resources and to ensure a safe supply of these resources;

(o) To prescribe types and forms of scientific permits for public educa-

tional or scientific institutions, federal and state agencies and consultants performing marine resource studies;

(p) To suspend the issuance of licenses when necessary to impose a moratorium to conserve a fishery resource;

(q) To promote, construct, monitor and maintain artificial fishing reefs in the marine waters of the State of Mississippi and in adjacent federal waters; to accept grants and donations of money or materials from public and private sources for such reefs; to set permit fees and establish guidelines for the construction of artificial reefs in federal waters; and to apply for any federal permits necessary for the construction or maintenance of artificial fishing reefs in federal waters. The location data associated with artificial reefs by corporations and private individuals shall not be published by the commission or the department on the website or in written publications of the department. Location data of the artificial reefs may be requested in writing by any individual and shall be provided by the department in a timely manner; and

(r) To require, in addition to other licensing requirements, the successful completion of educational or training programs on shellfish sanitation as a prerequisite to receiving commercial licenses authorized under this chapter in order to ensure compliance with the Interstate Shellfish Sanitation Conference's educational requirements for shellfish processors, dealers and harvesters by January 1, 2014.

(2) The department shall not adopt rules, regulations or ordinances pertaining to marine resources which are more stringent than federal regulations. In any case where federal laws and regulations are silent on a matter pertaining to marine resources, the laws and regulations of the State of Mississippi shall control. The department shall review all marine resource ordinances for compliance with the no more stringent standard and revise any ordinances more stringent than this standard no later than December 31, 1992. This subsection shall not apply to rules, regulations or ordinances pertaining to the wild stock of marine fin fish.

HISTORY: Codes, 1942, § 6047-06; Laws, 1960, ch. 173, § 6; Laws, 1962, ch. 193, § 9; Laws, 1974, ch. 572, § 4; Laws, 1975, ch. 321, § 1; Laws, 1978, ch. 497, § 1; Laws, 1980, ch. 380; Laws, 1981, ch. 537, § 1; Laws, 1982, ch. 446, § 2; Laws, 1985, ch. 512, § 2; Laws, 1987, ch. 521, § 1; Laws, 1988, ch. 395, § 1; Laws, 1989, ch. 562, § 1; Laws, 1991, ch. 564, § 1; Laws, 1992, ch. 355, § 1; Laws, 1992, ch. 544, § 1; Laws, 1993, ch. 521, § 1; Laws, 1994, ch. 578, § 50; Laws, 1995, ch. 611, § 1; Laws, 1996, ch. 499, § 1; Laws, 1997, ch. 353, § 1; Laws, 1997, ch. 579, § 18; Laws, 1999, ch. 558, § 1; Laws, 2000, ch. 557, § 1; Laws, 2009, ch. 495, § 1; Laws, 2013, ch. 450, § 1, eff from and after passage (approved Mar. 25, 2013); Laws, 2020, ch. 418, § 7, eff from and after July 1, 2020.

Amendment Notes — The 2013 amendment in (1)(q), substituted "the Department in a timely manner; and" for "the Department of Marine Resources in a timely manner" at the end; added (1)(r); and made minor stylistic changes.

The 2020 amendment inserted "department, with the advice of the advisory" in the introductory paragraph of (1) and (1)(g); and substituted "department" for "commission" twice in (1)(c) and twice in (2).

§ 49-15-17. Seafood Fund; special accounts; sources of funds.

(1)(a) All monies received or obtained by the commission under the provisions of this chapter shall be paid over by the commission to the State Treasurer and shall be deposited into the fund known as the "Seafood Fund." All revenues collected through the department, to include, but not limited to, commercial saltwater licenses and taxes, permits, fines and penalties, and confiscated catches, shall be deposited into the department operating account (Seafood Fund) and expended for the operation of the department, as authorized by the Legislature.

(b) There is established a special account to be known as the "Artificial Reef Program Account" within the Seafood Fund. Any funds received from any public or private source for the purpose of promoting, constructing, monitoring or maintaining artificial reefs in the marine waters of the state or in federal waters adjacent to the marine waters of the state shall be credited to the account. Any unexpended funds remaining in the account at the end of the fiscal year shall not lapse into the Seafood Fund, but shall remain in the account. The department may expend any funds in the account, subject to appropriation by the Legislature, to accomplish the purpose of the account.

(c) There is established a special account to be known as the "Coastal Preserve Account" within the Seafood Fund. Any funds received from any public or private source for the purpose of management, improvement and acquisition of coastal preserves in the state and money required to be deposited pursuant to Sections 27-19-56.10 and 27-19-56.27, shall be credited to the account. Any unexpended funds remaining in the account at the end of the fiscal year shall not lapse into the Seafood Fund, but shall remain in the account. The department may expend any funds in the account, subject to appropriation by the Legislature, for the management, improvement and acquisition of coastal preserves.

(d) There is established a special account to be known as the "Mississippi Seafood Marketing Program Account" within the Seafood Fund. Monies required to be deposited into the account under Section 27-19-56.27 and any funds received from any public or private source for the purpose of promoting the Mississippi seafood industry must be credited to the account. Any unexpended funds remaining in the account at the end of the fiscal year do not lapse into the Seafood Fund, but remain in the account. The department may expend any funds in the account, subject to appropriation by the Legislature, to accomplish the purposes of this account including, but not limited to, providing funds for cobia stock enhancement programs.

(2) The fund shall be treated as a special trust fund and interest earned on the principal shall be credited to the fund.

(3) The secretary of the commission shall keep accurate reports of monies handled as a part of the permanent records of the commission, and the State Treasurer shall furnish the secretary of the commission such forms as may be needed, and the secretary shall account for such forms in his reports to the Treasurer.

HISTORY: Laws, 1994, ch. 578, § 14; Laws, 1999, ch. 558, § 3; Laws, 2000, ch. 536, § 18; Laws, 2003, ch. 529, § 20; Laws, 2005, ch. 532, § 3; Laws, 2011, ch. 523, § 46; brought forward and amended, Laws, 2013, ch. 560, § 44, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added "including, but not limited to, providing funds for cobia stock enhancement programs" at the end of (1)(d).

§ 49-15-21. Enforcement officers; reserve unit.

(1) The executive director shall appoint the necessary enforcement officers for the administration of this chapter. The salary of all enforcement officers employed shall be as determined by the State Personnel Board. However, the members of the Enforcement Officers' Reserve Unit created in subsection (4) shall serve without pay, and shall not be employees of the State of Mississippi for purposes of the State Personnel System, the Workers' Compensation Law, the Public Employees' Retirement System or the State Employees Life and Health Insurance Plan.

(2) All enforcement officers shall be experienced and qualified persons thoroughly familiar with the seafood business and shall be at least twenty-one (21) years of age and be a high school graduate or its equivalent. The enforcement officers shall diligently enforce all laws and regulations for the protection, propagation, preservation or conservation of all saltwater aquatic life of the State of Mississippi, and they are hereby constituted peace officers of the State of Mississippi, with full police power and jurisdiction to enforce all laws of the State of Mississippi and all regulations adopted and promulgated by the commission. Enforcement officers may exercise such powers in any county of the State of Mississippi and on any waters of the state, and they are hereby authorized to carry firearms or other weapons, concealed or otherwise, and they shall investigate all persons, corporations and otherwise who are alleged to have violated any laws, and make affidavits, arrests and serve papers of any court of competent jurisdiction, in like manner as is provided for sheriffs and deputy sheriffs, when the same shall be in connection with the enforcement of the seafood laws of the State of Mississippi and such other laws and regulations of this state as the commission may designate. The enforcement officers may seize at any time aquatic life caught, taken or transported in a manner contrary to the laws of this state, and may confiscate and dispose of the same. Any net or other paraphernalia used or employed in connection with a violation may be seized, and forfeiture proceedings may be instituted. Enforcement officers may draft the aid of captains, crews and boats or licensed vessels to enforce this chapter and may, without warrant, board and search vessels or vehicles. The application for any license or permit from the commission to catch, fish, take, transport or handle or process any form of aquatic life, or the taking, catching, transporting or handling or processing of any and all aquatic life in this state shall constitute acquiescence and agreement upon the part of the owners, captains and crews, employers and dealers to the provisions of this chapter and the agreement that enforcement officers may exercise the authority granted under the provisions hereof.

(3) Prior to entering into performance of their duties or delegations or as soon after appointment as possible, each enforcement officer, at the expense of the commission, shall attend and complete an appropriate curriculum in the field of law enforcement at the Mississippi Law Enforcement Officers' Training Academy or other law enforcement training program approved under Section 45-6-7. However, members of the Enforcement Officers' Reserve Unit created in subsection (4) of this section may attend the Mississippi Law Enforcement Officers' Training Academy at the expense of the commission if it deems the training necessary or desirable. No enforcement officer shall be entitled to payment of salary after the first twelve (12) months in office if he has either failed to attend the academy or has failed to comply with other qualifications or successfully complete any law enforcement qualification examinations as the director deems necessary. The enforcement officers shall, on a periodic basis, be required to attend additional advanced courses in law enforcement in order that they will be properly improved and trained in the modern, technical advances of law enforcement.

(4)(a) There is hereby created an Enforcement Officers' Reserve Unit, hereinafter termed "the reserve," to assist the enforcement officers in the performance of their duties under this chapter. The reserve shall consist of volunteers who are approved by the Executive Director of the Department of Marine Resources or his designee. The members of the reserve shall serve without pay. Reserve officers shall be in such numbers as determined by the enforcement needs, with the maximum strength of reserve officers limited to the same number as enforcement officers.

(b) To be eligible for membership in the reserve, an applicant must be twenty-one (21) years of age, be a high school graduate or its equivalent, be in good physical condition, have a Mississippi driver's license, be in good standing with the community, be available for training and duty, not be a member of any police, auxiliary police, civil defense, or private security agency, have never been convicted of a felony, and have one (1) of the following:

(i) An honorable discharge or honorable separation certificate from one (1) of the United States military services;

(ii) Three (3) years of responsible post-high school work experience that required the ability to deal effectively with individuals and groups of persons;

(iii) Successful completion of sixty (60) semester hours at an accredited college or university; or

(iv) The qualifications as are outlined in this section for enforcement officers.

Members of the immediate family of enforcement officers shall not be eligible for the reserve unless a special waiver is granted.

Upon acceptance into the reserve, members shall receive a temporary appointment for one (1) year. During this year of temporary status, members must successfully complete the required training and must qualify on the same firearms course as enforcement officers.

(c) The reserve shall be under the leadership and direction of the executive director or his designee. The training of the reserve shall be conducted by an enforcement officer. The reserve shall meet at least once each month for the purpose of training and transacting any business as may come before it. The executive director shall be notified in writing of all meetings of the reserve and the time and place of the meetings shall be recorded with the executive director. The executive director shall prepare a reserve officer's manual with the advice and consent of the commission. The manual shall include, but is not limited to, the following: activities and operations, training, administration and duties. During active service, the reserve shall be under the direction of the executive director or his designated representative. When a reserve officer is on active duty and assigned to a specific enforcement officer, he shall be under the direct supervision of that officer. Reserve officers serve at the discretion of the executive director and may be dismissed by him. Reserve officers shall furnish their own uniforms and other personal equipment if the executive director does not provide such items.

(d) The executive director may require members of the Enforcement Officers' Reserve Unit to attend officer reserve training programs conducted by county or municipal agencies.

(e) The executive director may issue uniforms to such reserve officers and may authorize the issuance of any state equipment necessary for the reserve officers to adequately assist law enforcement officers. The executive director may develop a reserve officer identification system to accomplish the issuance of such items in accordance with the State Auditor guidelines.

(f) If the executive director determines that a member of the Enforcement Officers' Reserve Unit may attend a training program as authorized under this section, it shall require that reserve officer to sign an agreement, prior to attending a training program, which shall stipulate that if the reserve officer accepts employment from any other public or private law enforcement agency within three (3) years after completion of his training program, the reserve officer or the respective hiring law enforcement agency shall reimburse the department for the total cost of his training program. By October 1 of each year, the department shall provide the Conservation and Water Resources Committee of the Mississippi House of Representatives and the Ports and Marine Resources Committee of the Mississippi Senate a listing which contains each name and the respective cost of training each reserve officer received during the previous year.

HISTORY: Prior 1972 Code § 49-15-21 [Codes, 1942, § 6047-09; Laws, 1960, ch. 173, § 9; Laws, 1966, ch. 278, § 1; Am, 1974, ch. 542, § 7] repealed by Laws, 1978, ch. 484, § 26. Former § 49-15-21 [En, 1980, ch. 553, § 4; Am, 1985, ch. 382, § 1] repealed by Laws, 1985, ch. 382, § 2. New § 49-15-21 enacted, Laws, 1989, ch. 562, § 2; Laws, 1990, ch. 577, § 1; Laws, 1991, ch. 522, § 4; Laws, 1993, ch. 532, § 1; Laws, 1994, ch. 578, § 18; Laws, 1997, ch. 362, § 1; Laws, 1999, ch. 585, § 4; Laws, 2002, ch. 376, § 1; Laws, 2016, ch. 363, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment substituted "twelve (12) months" for "six (6) months" in the third sentence of (3).

§ 49-15-25. Advisory council may be appointed by department.

The department may appoint an advisory council of persons who may fairly be regarded as representative of all the various segments of the industry. This council shall aid the department in formulating policies and discussing problems related to the administration of this chapter and the advancement and protection of the industry.

HISTORY: Codes, 1942, § 6047-14; Laws, 1960, ch. 173, § 14, eff from and after passage (approved March 23, 1960); Laws, 2020, ch. 418, § 8, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" twice.

§ 49-15-27. Department granted authority to lease bottoms.

The department is hereby granted full and complete authority to lease the bottoms within its jurisdiction upon the following terms and conditions:

(1) All areas within the department's jurisdiction, not designated tonging reefs by this chapter, or hereinafter designated tonging reefs by the department; all areas not designated natural reefs by the department, and all areas not within the boundaries of riparian property owners may be leased by the department.

(2) All individual lessees shall be residents of the State of Mississippi, or if a firm or corporation, such firm or corporation shall be organized under the laws of the State of Mississippi.

(3) No individual, corporation, partnership or association may lease less than one (1) acre nor more than three thousand five hundred (3,500) acres; however, in the case of an individual there shall not be counted towards such limitation any lands leased by a corporation, partnership or association in which such individual owns ten percent (10%) or less interest and, in the case of a corporation, partnership or association, there shall not be counted toward such limitation any lands leased by an individual stockholder, partner or associate thereof who owns ten percent (10%) or less interest in such corporation, partnership or association.

(4) Individuals, firms or corporations desiring to lease bottoms shall make application to the department in writing, describing the area to be leased.

(5) The department shall consider bottom leasing applications in the order in which each is filed and may award, within sixty (60) days, a lease to the area described in the application upon payment of the rent in advance.

(6) Such leases shall be for a term of five (5) years, with the right of lessee to renew the lease for an additional five (5) years, and continue to renew at five-year intervals, at the same ground rental rate so long as lessee actively cultivates and gathers oysters, and complies with the provisions of this chapter. No lease may be transferred without approval by the department of the transfer.

(7) The department shall fix a ground rental at not less than Five Dollars ($5.00) per acre.

(8) The department shall keep an accurate chart of the areas within its jurisdiction and shall mark on such chart those areas which are under lease. All leases shall be marked by appropriate poles, stakes or buoys of such material as will not injure watercraft, at the expense of the leaseholder. The department shall keep an accurate book, designated "Mississippi Oyster Farms" which shall contain copies of all leases. If any lease be cancelled or expire, such fact shall be noted on the face of such lease. Lessees shall be "oyster farmers" for the purposes of any grants, aid, subsidies or other assistance from the federal government or other governmental or private agencies.

(9) All funds derived from leasing shall be paid into the Seafood Fund under Section 49-15-17, for use by the department to further oyster production in this state, which includes plantings of oysters and cultch materials.

(10) All leases made by the department under the authority of this section shall be subject to the paramount right of the state and any of its political subdivisions authorized by law, to promote and develop ports, harbors, channels, industrial or recreational projects, and all such leases shall contain a provision that in the event such authorized public body shall require the area so leased or any part thereof for such public purposes, that the lease shall be terminated on reasonable notice fixed by the department in such lease. On the termination of any lease, the lessees shall have the right to remove any oysters within the leased area within such time as may be fixed by the department and in accordance with such reasonable rules and regulations as the department may adopt.

Any person convicted of taking oysters from leased land or from waters that are not of a safe sanitary quality without a permit as provided in Section 49-15-37 shall, on the first offense, forfeit all equipment used, exclusive of any boat or boats; and be fined not to exceed Two Thousand Dollars ($2,000.00) or sentenced not to exceed one (1) year in the county jail, or both. Subsequent convictions shall be punishable by forfeiture of all equipment, including any boat or boats; and a fine not to exceed Five Thousand Dollars ($5,000.00) or not to exceed two (2) years in prison, or both such fine and imprisonment.

The department is enjoined to cooperate with the Jackson County Port Authority, the Harrison County Development Commission, the municipal port commission and other port and harbor agencies, so that oyster beds shall not be planted in close proximity to navigable channels. The department or lessee shall have no right of action as against any such public body for damages accruing to any natural reef or leased reef by any necessary improvement of such channel in the interest of shipping, commerce, navigation or other purpose authorized by law.

HISTORY: Codes, 1942, § 6047-11; Laws, 1960, ch. 173, § 11; Laws, 1977, ch. 463, § 1; Laws, 2005, ch. 343, § 1; Laws, 2015, ch. 412, § 1, eff from and after July 1, 2015; Laws, 2022, ch. 363, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2015 amendment substituted "five hundred (500) acres" for "one hundred (100) acres" in (3); deleted "and the price proposed to be paid therefor" from the end of (4); substituted "bottom leasing" for "such" in (5); rewrote the first sentence of (6), which read: "Such leases shall be for a term of one (1) year, with the right of lessee to renew the lease of an additional year, and from year to year, at the same ground rental so long as lessee actively cultivates and gathers oysters, and complies with the provisions of this chapter, provided that no lease shall be renewed for more than twenty-five (25) years total"; inserted "Section" preceding "49-15-17" in (9); deleted the former next-to-last paragraph of the section, which read: "No lease of any area shall be made unless and until the commission shall have given at least fifteen (15) days' public notice of its intention to lease such area, such notice to be given by publication in a newspaper of general circulation in such county."

The 2022 amendment substituted "department" for "commission" throughout the section; and in (3), substituted "less than one (1) acre nor more than three thousand five hundred (3,500) acres" for "less than five (5) acres nor more than five hundred (500) acres."

§ 49-15-28. Seafood dealer license; seafood processor license; fees; applicability of section.

(1) Each person buying or handling seafood secured from commercial fishermen, or from other wholesale dealers, for the purpose of resale, whether handling on a commission basis or otherwise, and every resident person shipping seafood out of the State of Mississippi on consignment or order, except fishermen shipping their own catch, shall be considered a wholesale dealer and shall obtain a seafood dealer license for a fee of One Hundred Dollars ($100.00). A seafood dealer shall not operate as a seafood processor.

(2) Any factory or person engaged in the processing, manufacturing or changing of seafood products into different market forms shall be considered a seafood processor and shall obtain a seafood processor license for a fee of One Hundred Dollars ($100.00) annually. A seafood processor may operate as a seafood dealer.

(3) The license for a seafood dealer and the license for a seafood processor shall be nontransferable and a license shall be required for each factory or place of business.

(4) It is unlawful for any factory or person to act as a seafood dealer or seafood processor without first having obtained the appropriate license.

(5) This section shall not apply to the following:

(a) A dealer in fresh seafoods who merely preserves the seafood for future sale to prevent spoilage and is in competition with other retailers who are not required to pay this tax;

(b) Nonresident commercial wholesalers engaged in delivering processed seafood product, with proof of purchase, to licensed Mississippi processors, dealers, restaurants or retailers;

(c) Nonresident commercial wholesalers engaged in delivering unprocessed seafood product, with proof of purchase, to licensed Mississippi processors or dealers.

(d) Contract carriers engaged in the import and export of seafood product, with proof of purchase, to and from licensed Mississippi processors.

(e) Restaurants and retailers receiving processed seafood product, with proof of purchase, from a licensed resident or nonresident commercial wholesaler, and selling to the end user.

HISTORY: Laws, 1997, ch. 579, § 2; Laws, 2007, ch. 330, § 1, eff from and after passage (approved Mar. 13, 2007); Laws, 2022, ch. 323, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment rewrote the section to divide the combination seafood dealer and processor license into two separate licenses, and to add the exceptions in (5)(b) through (e).

§ 49-15-30. Commission may promulgate regulations for nonresident permits, reciprocity; penalties.

(1) The commission may promulgate rules and regulations for nonresident permits in order to promote reciprocal agreements with other states.

(2) The commission shall provide that residents of other states bordering on the Gulf of Mexico who are applicants for a commercial fishing license of any type as provided for in this chapter shall pay the same fee or fees that a resident of this state pays in this state for that license if the respective applicant's domicile state does not charge a greater fee or fees for a Mississippi resident than for a resident of any other state to engage in a like activity in the other state. If the applicant's domicile state does charge a greater fee or fees for residents of Mississippi than for a resident of the applicant's domicile state, then that applicant shall pay the same fee or fees that the applicant's domicile state charges residents of Mississippi.

(3) The commission shall require a nonresident to purchase the same type and number of licenses and pay the same fees that are required of Mississippi residents to engage in like activity in the nonresident's state.

(4)(a) If an applicant applies for a nonresident commercial fishing license to engage in a certain activity and the applicant's state does not issue a nonresident commercial fishing license for that activity, then the commission shall not issue such license to the applicant.

(b) If the applicant's domicile state has additional mandatory licensing requirements, the applicant must meet those requirements before receiving a nonresident commercial fishing license.

(5) Any nonresident who engages in the commercial taking of seafood within the territorial waters of Mississippi without having the required nonresident commercial license is guilty of a misdemeanor and shall be fined Five Thousand Dollars ($5,000.00) and shall forfeit any equipment, gear or nets used in the offense.

HISTORY: Laws, 1974, ch. 572, § 9; Laws, 1997, ch. 579, § 20; Laws, 1998, ch. 512, § 1; Laws, 2017, ch. 385, § 1, eff from and after passage (approved Mar. 27, 2017).

Amendment Notes — The 2017 amendment, effective March 27, 2017, added (4)(b).

§ 49-15-36. Oyster reefs and bottoms; rotating opening; closing of oyster reefs; special permits for taking oysters during closed season; depuration.

(1) The Department of Marine Resources shall have full jurisdiction and control of all public and natural oyster reefs and oyster bottoms of the State of Mississippi.

(2) Public reefs may be opened for harvest of oysters during the season on a rotating basis. If the department determines that a particular reef has been overharvested or that a high percentage of sublegal size oysters exist on a particular reef and that harvest could damage future oyster crops, the department may close designated reef areas and keep them closed during the season.

(3) The department shall promulgate regulations regarding the closing of oyster reefs to protect the public health. When that testing indicates the oysters on the closed reef are suitable for consumption, the reef shall be opened for the taking of oysters as soon as notice of that opening may be made to interested parties. The authority to open or close oyster reefs under this chapter shall be solely within the discretion of the department. The Gulf Coast Research Laboratory or other certified laboratory shall cooperate with the department and shall conduct necessary tests to determine the condition of oyster reefs at the request of the department. The department may limit the sale of oysters for human consumption.

(4)(a) The department may issue special permits for the purpose of catching oysters outside the open season or in areas not normally open to harvest to those nonprofit organizations that are tax exempt under Section 501(c) of the United States Internal Revenue Code and which have on file with the Department of Revenue a tax exemption letter issued by the United States Internal Revenue Service.

(b) The department shall promulgate rules and regulations governing the taking of oysters by the nonprofit organization and shall issue such regulations to all organizations upon request and at the issuance of the special permit.

(5) The department shall establish a reasonable period of time for depuration of oysters replanted from restricted waters. That period of time shall be consistent with the maintenance of the public health and may vary from time to time and from one reef to another in accordance with environmental conditions.

(6) The department is authorized to conduct a pilot program for bottom land leasing for oyster production as provided in Section 49-15-40.1.

HISTORY: Laws, 1997, ch. 579, § 4; Laws, 1998, ch. 509, § 1; Laws, 2006, ch. 307, § 1; Laws, 2008, ch. 333, § 1; Laws, 2016, ch. 325, § 1, eff from and after July 1, 2016; Laws, 2022, ch. 362, § 2, eff from and after passage (approved March 22, 2022).

Amendment Notes — The 2016 amendment deleted the former second sentence of (3), which read: "The waters of reefs closed under this chapter shall be tested between

five (5) and ten (10) days after closure"; and substituted "Department of Revenue" for "State Tax Commission" in (4)(a).

The 2022 amendment, effective March 22, 2022, substituted "department" for "commission" everywhere it appears in (2), (4) and (5); in (1), substituted "Department of Marine Resources" for "commission," and deleted the former last sentence, which read: "The commission may delegate this authority to the executive director of the department"; in (3), in the first sentence, substituted "department" for "commission," in the third sentence, deleted "commission, acting through the" preceding "department," and in the last sentence, deleted "but all matters concerning the harvesting of oysters shall be within the jurisdiction of the commission" from the end; and added (6).

§ 49-15-40. Projects to create or establish new oyster beds; molluscan depuration facilities; lease of water bottoms to political subdivisions.

(1) The commission may support projects in the nature of digging or constructing canals or ditches to bring additional water to existing oyster reefs or beds in need of that water, or for the purpose of creating or establishing new oyster reefs or beds. All reefs created or established under this section shall be public reefs. The commission may expend any monies as it deems necessary and expedient to participate in the digging of those canals. The commission may also enter into interstate or intrastate efforts to support these projects and may seek and utilize aid from all federal, state and local sources in this endeavor. To aid in the construction of any canals or ditches, the commission may exercise the right of eminent domain in the manner provided by law.

(2) The commission may construct, operate and maintain onshore, molluscan facilities using any federal or special funds, other than general funds, for the purpose of testing and proving technology relating to oysters and other shellfish. In connection with the construction, operation and maintenance of the facilities, the commission may contract with any persons it deems necessary for the operation, testing, maintenance and evaluation of the facilities, subject to the approval of the State Personnel Board. The commission may locate the facilities on any available public properties, subject to the approval of the governing body of that jurisdiction and all other applicable state laws. Once the technology has been tested and proven, the commission may conduct any other tests and experiments with oysters or other shellfish as may be necessary to enhance production or quality of shellfish.

(3) The commission may lease to political subdivisions of the State of Mississippi up to one thousand (1,000) acres of water bottoms for development of oyster reefs and those political subdivisions may permit residents of the State of Mississippi to harvest oysters from the reefs. The political subdivision may charge and receive a fee for each sack of oysters harvested. The commission shall consider and approve the application of a political subdivision after determining that (a) no conflicts exist with sites requested in applications filed before the application of the political subdivision; (b) a fair and reasonable rental payment has been set; and (c) the lease will insure the maximum culture and propagation of oysters.

HISTORY: Laws, 1997, ch. 579, § 6; Laws, 2016, ch. 324, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment, in (2), rewrote the first sentence, which read: "The commission may construct, operate and maintain an onshore, molluscan depuration facility using any federal or special funds, other than general funds, for the purpose of testing and proving depuration technology of oysters and other molluscan shellfish," substituted "facilities" for "facility" in the second and third sentences, and, in the last sentence, substituted "Once the technology" for "Once depuration technology" and deleted "for oyster" preceding "the commission may conduct.

§ 49-15-40.1. Pilot program for bottom land leasing for oyster production.

(1) The Department of Marine Resources shall conduct a pilot program for bottom land leasing for oyster production. The Department of Marine Resources shall lease to oyster and/or seafood processors who only operate in the waters adjacent to Hancock County the following areas of bottom lands for oyster production:

(a) Area 1: The tonging area in Hancock County from the Bay St. Louis Railroad Bridge to Long Point, which is five hundred (500) feet offshore to one (1) mile offshore.

(b) Area 2: Telegraph Reef.

(2)(a) Before approving any leases for the two (2) areas, which shall include any natural reefs within the areas, the Department of Marine Resources must make an affirmative finding that the lessee is an oyster and/or seafood processor who only operates in the waters adjacent to Hancock County.

(b) The lease shall be for a term of five (5) years, and the lessee shall have the first right to renew the lease for an additional five (5) years. Before such renewal, the Department of Marine Resources may adjust the acreage and price of the lease to reflect the total number of acres of oyster production.

(c) Each lease shall set a price at Two Dollars ($2.00) per acre for at least the first five (5) years of the lease.

(d) All funds derived from leasing shall be paid to the Department of Marine Resources for deposit into the Seafood Fund under Section 49-15-17, for use by the Department of Marine Resources to further oyster production in this state, which includes plantings of oysters and cultch materials.

HISTORY: Laws, 2022, ch. 362, § 1, eff from and after passage (approved March 22, 2022).

§ 49-15-41. Oysters not to be caught at night.

It shall be unlawful for any person to fish, catch or take oysters from the waters of Mississippi during the hours between sunset and sunrise of each day.

Violation of this section shall be punishable by a fine not to exceed Ten Thousand Dollars ($10,000.00) or imprisonment not to exceed one (1) year in the county jail, or both.

HISTORY: Codes, 1930, § 6879; 1942, § 6077; Laws, 1958, ch. 195, § 56; Laws, 1977, ch. 463, § 5; Laws, 2016, ch. 383, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment, in the first paragraph, substituted "the waters of Mississippi" for "any of the oyster reefs in the State of Mississippi" and deleted "by the use of any tongs, dredge, rake or other mechanical device" thereafter; and in the second paragraph, substituted "not to exceed Ten" for "nor to exceed Ten," "or" for "and/or," "imprisonment not to exceed one" for "up to one" and added "or both" at the end.

§ 49-15-46. Licensing and fees for vessels engaged in catching, taking, carrying or transporting oysters; licensing and fees for molluscan shellfish aquaculture operation; transfer of vessel license; tagging of oysters harvested; recreational oyster permits; shell retention fees; authority to keep certain number of blue crabs for personal consumption.

(1) Each vessel used to catch, take, carry or transport oysters from the reefs of the State of Mississippi, or engaged in transporting any oysters in any of the waters within the territorial jurisdiction of the State of Mississippi, for commercial use, shall annually, before beginning operations, be licensed by the department and pay the following license fee:

(a) Fifty Dollars ($50.00) on each in-state vessel or boat used for tonging oysters or gathering oysters by hand;

(b) One Hundred Dollars ($100.00) on each in-state vessel or boat used for dredging oysters;

(c) One Hundred Dollars ($100.00) on each out-of-state vessel or boat used for tonging oysters or gathering oysters by hand; or

(d) Two Hundred Dollars ($200.00) on each out-of-state vessel or boat used for dredging oysters.

(2) Each molluscan shellfish aquaculture operation shall annually, before beginning operations, be licensed by the department and pay the following license fee:

(a) Fifty Dollars ($50.00) on each resident molluscan shellfish aquaculture operation; or

(b) One Hundred Dollars ($100.00) on each nonresident molluscan shellfish aquaculture operation.

(3) The department may authorize the transfer of a vessel license to a different vessel provided that the owner of both vessels is the same titled owner.

(4) All oysters harvested in the State of Mississippi shall be tagged. Tags shall be issued by the department and shall bear the catcher's name, the date and origin of the catch, the shell stock dealer's name and permit number. The department shall number all tags issued and shall maintain a record of those tags. The department, in its discretion, may adopt any regulations regarding the tagging of oysters and other shellfish.

(5) Each person catching or taking oysters from the waters of the State of Mississippi for personal use shall obtain a permit from the department and pay an annual recreational oyster permit fee of Ten Dollars ($10.00). Oysters caught under a recreational permit shall not be offered for sale. The limits on the allowable catch of oysters for recreational purposes shall be three (3) sacks per week. The department shall issue tags of a distinguishing color to designate recreationally harvested oysters, which shall be tagged on the same day of harvest in the manner prescribed in subsection (4) of this section for commercially harvested oysters or by regulation of the department.

(6) The department shall assess and collect a shell retention fee for the shells taken from waters within the territorial jurisdiction of the State of Mississippi as follows:

(a) Commercial and recreational harvesters - Fifteen Cents (15¢) per sack paid to the department on the day of harvest;

(b) Initial oyster processor, dealer or factory first purchasing the oysters - Fifteen Cents (15¢) per sack paid to the department no later than the tenth day of the month following the purchase, on forms submitted by the department;

(c) Commercial harvesters transporting their catch out of the state - Fifty Cents (50¢) per sack paid to the department on the day of harvest, in addition to the fees paid in paragraph (a) of this subsection; and

(d) Commercial harvesters not selling their oysters to a Mississippi dealer - Fifteen Cents (15¢) per sack paid to the department on the day of harvest, in addition to fees paid in paragraph (a) of this subsection.

Funds received from the shell retention fee shall be paid into a special fund in the State Treasury to be appropriated by the Legislature for use by the department to further oyster production in this state, which includes plantings of oysters and/or cultch materials.

(7) During open seasons, oysters may be taken only by hands, tongs and dredges.

(8) Vessels licensed under Section 49-15-46 may keep in whole, for personal consumption up to thirty-six (36) blue crabs (portunidae family), per day. This exemption for personal consumption does not apply to fish or crabs that are otherwise illegal to possess or catch.

HISTORY: Laws, 1997, ch. 579, § 8; Laws, 1999, ch. 519, § 4; Laws, 2000, ch. 524, § 3; Laws, 2002, ch. 430, § 1; Laws, 2004, ch. 333, § 1; Laws, 2006, ch. 306, § 1; Laws, 2009, ch. 362, § 1; Laws, 2010, ch. 343, § 1, eff from and after July 1, 2010; Laws, 2019, ch. 381, § 1, eff from and after July 1, 2019; Laws, 2022, ch. 432, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2019 amendment, in (1), substituted "used" for "utilized" in (a) through (d), added (e) and (f), and made related changes; and in (2), inserted "or off-bottom oyster aquaculture" and made a related change.

The 2022 amendment, in (1), substituted "department" for "commission" in the introductory language, and deleted former (e) and (f), which provided fees for state vessels or boats used for off-bottom oyster aquaculture operations; rewrote former (2), which provided for "captain license – oyster" and the designation of one alternative captain for each license; substituted "department" for "commission" throughout (3)

through (6); and in (6)(c) and (d), substituted "paragraph (a) of this subsection" for "subsection (6)(a)."

§ 49-15-49. Pass Christian Harbor oyster check station named the Colonel George J. Wright, Sr., building.

The Mississippi Department of Marine Resources' oyster check station located at the Pass Christian Harbor, Pass Christian, Mississippi, shall be named the Colonel George J. Wright, Sr., building. The Department of Finance and Administration shall prepare or have prepared a distinctive plaque to be placed in a prominent place within the Colonel George J. Wright, Sr., building, which states the background, accomplishments and public health service to the state and nation of Colonel George J. Wright, Sr.

HISTORY: Laws, 2013, ch. 437, § 1, eff from and after passage (approved Mar. 25, 2013).

Editor's Notes — A former § 49-15-49 [Codes, 1942, § 6048-03; Laws, 1962, ch. 193, § 3; repealed by Laws of 1974, ch. 572, § 10, effective from and after passage (approved April 23, 1974)] pertained to contracts for removal of shells.

§ 49-15-63. Penalties.

(1)(a) Any person, firm or corporation violating any of the provisions of this chapter or any ordinance duly adopted by the department, unless otherwise specifically provided for herein, shall, on conviction, be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), for the first offense, unless the first offense is committed during a closed season, in which case the fine shall be not less than Five Hundred Dollars ($500.00), nor more than One Thousand Dollars ($1,000.00); and not less than Five Hundred Dollars ($500.00), nor more than One Thousand Dollars ($1,000.00), for the second offense when such offense is committed within a period of three (3) years from the first offense; and not less than Two Thousand Dollars ($2,000.00) nor more than Four Thousand Dollars ($4,000.00), or imprisonment in the county jail for a period not exceeding thirty (30) days for any third or subsequent offense when such offense is committed within a period of three (3) years from the first offense.

(b) In addition, upon conviction of such third or subsequent offense, it shall be the duty of the court to revoke the license of the convicted party and of the boat or vessel used in such offense, and no further license shall be issued to such person and for said boat to engage in catching or taking of any seafoods from the waters of the State of Mississippi for a period of one (1) year following such conviction. Forfeiture of any equipment or nets used in a second or subsequent offense may be instituted pursuant to Sections 49-15-201 through 49-15-207. If the person in possession of or using the nets in the violation is not the owner or licensee of the nets, the department shall notify the owner or licensee of the nets. The nets shall be subject to forfeiture unless the nets were stolen and prosecution for the theft is initiated. Equipment as used in this section shall not mean boats or vessels.

(c) Any person convicted and sentenced under this section for a second or subsequent offense shall not be considered for reduction of sentence.

(d) Except as provided under subsection (5) of Section 49-15-45, any fines collected under this section shall be paid into the Seafood Fund.

(e) In addition to any other penalties, the department may suspend the license of any person convicted of a violation of this chapter and may suspend the license of any vessel used in the violation for a period not to exceed five (5) days for the first offense. For a second offense, the department may suspend the license of such person and vessel for a period not to exceed thirty (30) days.

(f) Upon conviction of five (5) seafood violations within a five-year period, the department may revoke the license of the convicted party and the boat or vessel used in the offenses, and may prohibit indefinitely the issuance of a license to the person and boat or vessel to engage in catching or taking of any seafood from the waters of the State of Mississippi. The department shall exercise this authority in accordance with the administrative procedures in Section 49-15-401 et seq.

(2) For any violation of this chapter, the individual registered as the captain shall be subject to the penalties provided in this chapter, if that individual is aboard the vessel. If that individual is not aboard the vessel, the individual designated as the alternate captain under Section 49-15-46 or substitute captain under Section 49-15-64.5 shall be subject to the penalties provided in this chapter. If no individual is designated under Section 49-15-46 or Section 49-15-64.5, the person, firm or corporation owning the vessel shall be subject to the penalties provided for boat captains.

(3) All citations issued to boat operators for not possessing the boat's registration card shall be dismissed, along with all related court costs, upon the presentment of the boat's proper registration card to the court or magistrate holding the trial or hearing.

HISTORY: Codes, 1942, § 6047-13; Laws, 1960, ch. 173, § 13; Laws, 1980, ch. 365; Laws, 1988, ch. 388, § 1; Laws, 1993, ch. 532, § 2; Laws, 1993, ch. 521, § 2; Laws, 1994, ch. 578, § 22; Laws, 1997, ch. 601, § 1; Laws, 1999, ch. 519, § 7; Laws, 2003, ch. 380, § 1; Laws, 2004, ch. 333, § 2; Laws, 2006, ch. 306, § 2; Laws, 2010, ch. 410, § 1, eff from and after July 1, 2010; Laws, 2021, ch. 404, § 10, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment substituted "department" for "commission" everywhere it appears.

§ 49-15-64.1. Shrimp season: waters closed to shrimping.

(1) The shrimp season shall open on the first Wednesday of June. The shrimp season shall be closed from January 1 until it is opened the first Wednesday of June, except south of the Intracoastal Waterway. The shrimp season shall be closed south of the Intracoastal Waterway and west of the Gulfport Ship Channel from May 1 until it is opened the first Wednesday of June, except as may be provided in subsection (2) of this section. For the

purposes of this section only, that portion of the Intracoastal Waterway that extends from a point south of Long Beach to a point south of Point Clear is described as follows:

Begin at green buoy or beacon number 1 which is located approximately three (3) miles north of West Point on Cat Island, thence extending southwesterly to buoy or beacon number 4P, thence southwesterly to Pass Marianne Light, thence southwesterly to buoy or beacon number 15P at the northernmost point of Merrill Coquille, thence southwesterly to buoy or beacon number 17P, thence southwesterly to buoy or beacon number 22, thence westerly to Lighthouse Point and continuing westward following the meandering of the shoreline to the boundary line of the state.

(2) The commission, by majority vote, may open the season at an earlier or later date in designated areas only after sampling areas within its jurisdiction where shrimp may be caught for the purpose of determining the count of shrimp per pound. The commission may also, by majority vote, close certain designated areas where the shrimp count is found, by sampling, to be in excess of sixty-eight (68) per pound. If a natural or man-made disaster has the potential of adversely affecting the shrimp fishery, the commission, by majority vote, may open legal shrimping areas.

(3) The following waters are protective and staging areas for young shrimp, and are permanently closed to commercial and recreational shrimping activities:

All waters north of a line beginning at a point one-half mile due South of the shoreline at the Mississippi-Alabama state boundary; thence running westerly following the meanderings of the shoreline one-half mile therefrom to Light "5" in the Bayou Casotte Channel; thence running northerly to Light "7" in the Bayou Casotte Channel; thence running westerly following the meanderings of the shoreline one-half mile therefrom to the intersection with the Pascagoula Channel; thence running northwesterly to Beacon "50" in the Pascagoula Channel; thence running southwesterly to Beacon "49" in the Pascagoula Channel; thence running in the most direct line to the northeast point of Singing River Island; thence running westerly along the north shoreline to the northwest point of Singing River Island; thence running northwesterly to a point one-half mile due south of the mouth of Graveline Bayou; thence running westerly following the meanderings of the shoreline one-half mile therefrom to Beacon "18" in the Biloxi Bay Channel; thence running northwesterly to Beacon "22" in the Biloxi Bay Channel; thence running northwesterly to Beacon "26" in the Biloxi Bay Channel; thence running westerly to Beacon "34", exclusive of the Biloxi Channel itself; thence running westerly to Beacon "30" in the Biloxi Channel, exclusive of the Biloxi Channel itself; and thence running due South to a point on the north shore of Deer Island; thence running westerly following the north shore of Deer Island to the westernmost tip; thence running westerly in the most direct line to Biloxi Beacon "8"; thence running westerly following the meanderings of the shoreline at a distance of one-half mile therefrom to a point on the centerline of the CSX Railroad Bridge over St. Louis Bay; thence running westerly along

the centerline of said bridge to a point one-half mile south of the western abutment; thence running southwesterly following the meanderings of the shoreline, at a distance of one-half mile therefrom, to a point one-half mile due East of the mouth of Bayou Caddy; thence running due West to the mouth of Bayou Caddy; thence running southwesterly following the meanderings of the shoreline to the southernmost point of the Mississippi shoreline on the east bank of the mouth of the Pearl River thence following the meanderings of the east bank of the Pearl River to a point where the east bank of the Pearl River intersects the centerline of the Highway 90 bridge; thence westerly along the centerline of the Highway 90 bridge to a point that intersects the Mississippi-Louisiana state boundary.

(4) The redesignation of beacon numbers by the United States Coast Guard shall not alter the description of the boundary described in this section.

HISTORY: Laws, 1997, ch. 579, § 9; Laws, 2003, ch. 379, § 1; Laws, 2012, ch. 327, § 1; Laws, 2017, ch. 384, § 1, eff from and after passage (approved Mar. 27, 2017).

Amendment Notes — The 2017 amendment, effective March 27, 2017, in (1), substituted "Intracoastal" for "Intercoastal" everywhere it appears, and inserted "and west of the Gulfport Ship Channel" in the third sentence.

§ 49-15-64.5. Boats used for catching or transporting saltwater shrimp; licensing and fees.

(1)(a) Each freight boat, ice boat and catching boat used in catching or transporting saltwater shrimp taken from the waters of the State of Mississippi for sale in their fresh state, or for canning, packing, freezing or drying, shall first obtain from the commission an annual privilege license and pay a license fee at the following rates:

(i) Fifty Dollars ($50.00) for resident boats or vessels under thirty (30) feet in length in overall measurements and One Hundred Dollars ($100.00) for nonresident boats or vessels under thirty (30) feet in length in overall measurements;

(ii) Seventy-five Dollars ($75.00) for resident boats or vessels between thirty (30) and forty-five (45) feet in length in overall measurements and One Hundred Dollars ($100.00) for nonresident boats or vessels between thirty (30) and forty-five (45) feet in length in overall measurements;

(iii) One Hundred Dollars ($100.00) for resident boats or vessels greater than forty-five (45) feet in length in overall measurements and Two Hundred Dollars ($200.00) for nonresident boats or vessels greater than forty-five (45) feet in length in overall measurements.

(b) Beginning September 15, 1994, no nonresident shall be issued a commercial fishing license under this chapter for the taking of saltwater shrimp using any type of net if that nonresident's state of domicile prohibits the issuing of commercial fishing licenses to residents of this state to engage in like activity.

(2) Each recreational vessel engaging in shrimping with a net having a corkline length of sixteen (16) feet or less shall pay an annual resident license

fee of Fifteen Dollars ($15.00) or an annual nonresident license fee of Thirty Dollars ($30.00).

(3) During open seasons and in open areas, saltwater shrimp may be taken only with shrimp trawls, trawls, butterfly nets, skimmer nets, push trawls, beach seines and cast nets.

HISTORY: Laws, 1997, ch. 579, § 13; Laws, 1999, ch. 519, § 5; Laws, 2000, ch. 378, § 1, eff from and after passage (approved Apr. 17, 2000); Laws, 2022, ch. 433, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment deleted former (3), which required boats used in catching saltwater shrimp to register captain's name at the time the vessel obtains annual privilege license, and provided the fee for the captain license; and redesignated former (4) as (3).

§ 49-15-78. Prohibition against using gill net, trammel net, entanglement net, or like contrivance for taking finfish within half a mile of the shoreline; prohibition against using haul seine net for taking fish within half a mile of Cat Island; punishment.

(1)(a) It is unlawful for a person to use a gill net, trammel net, entanglement net, or like contrivances for the taking of finfish in marine waters within one-half (½) mile of the shoreline.

(b) For the purposes of this section, the phrase "like contrivances" means any net that is similar in form, function, purpose or use to a gill net, trammel net or entanglement net.

(c) It is unlawful for a person to use a haul seine net for the taking of fish in marine waters within one-half (½) mile of the shoreline of Cat Island.

(d) The provisions of this section shall not apply to hand seines, cast nets or brill nets.

(2) A violation of this section is punishable by the penalties provided in Section 49-15-100.

HISTORY: Laws, 1997, ch. 379, § 4; Laws, 2000, ch. 416, § 1, eff from and after July 1, 2000; Laws, 2020, ch. 410, § 1, eff from and after passage (approved June 29, 2020).

Amendment Notes — The 2020 amendment, effective June 29, 2020, redesignated (1) as (1)(a) and therein substituted "finfish" for "fish"; added (1)(b) through (d); and deleted "Mississippi Code of 1972" from the end of (2).

ARTICLE 5.

MISSISSIPPI ADVISORY COMMISSION ON MARINE RESOURCES.

Sec.

49-15-301. Mississippi Advisory Commission on Marine Resources; powers and duties to be exercised through advisory commission to Department of Marine Resources; membership; chairman; rules and regulations; marine resources technical advisory council; definitions.

Sec.
49-15-303. Powers and duties of advisory commission.
49-15-304. Promulgation of regulations regarding marine resources.
49-15-305. Executive director; nomination; powers and duties.
49-15-307. Powers and duties of department.
49-15-323. Department to have jurisdiction over certain violations of marine resources law or regulations committed in the Gulf of Mexico outside state's territorial waters.
49-15-325. Suspension or revocation of license.

§ 49-15-301. Mississippi Advisory Commission on Marine Resources; powers and duties to be exercised through advisory commission to Department of Marine Resources; membership; chairman; rules and regulations; marine resources technical advisory council; definitions.

(1) The Mississippi Advisory Commission on Marine Resources is hereby established and full power is vested in the advisory commission to advise the Executive Director of the Department of Marine Resources on all matters pertaining to all saltwater aquatic life and marine resources. The advisory commission shall advise the Executive Director of the Department of Marine Resources on the administration of the Coastal Wetlands Protection Law and the Public Trust Tidelands Act. Notwithstanding any other provision of law to the contrary, the commission shall only be an advisory commission to the Department of Marine Resources and shall not have independent authority to take official action on behalf of the Mississippi Department of Marine Resources and its actions are purely advisory in nature. Whenever the terms "Mississippi Commission on Marine Resources," "Commission on Marine Resources" and "commission" when referring to the Mississippi Commission on Marine Resources appear in any state law, they shall mean the "Mississippi Advisory Commission on Marine Resources."

(2) The reconstituted Mississippi Advisory Commission on Marine Resources shall consist of five (5) members to be appointed as follows:

(a) The Governor shall appoint five (5) members who shall be residents of Jackson, Harrison and Hancock Counties with the advice and consent of the Senate. The Governor shall appoint at least one (1) member from each county but not more than two (2) members from any one (1) county. The members designated in subparagraphs (i), (ii) and (iv) must be a resident of the county where the business he is appointed to represent is located.

(b) The advisory commission shall be composed as follows:

(i) One (1) member shall be a commercial seafood processor.

(ii) One (1) member shall be a commercial fisherman.

(iii) One (1) member shall be a recreational sports fisherman.

(iv) One (1) member shall be a charter boat operator.

(v) One (1) member shall be a member of an incorporated nonprofit environmental organization.

(c) Of the initial members appointed by the Governor, the members designated in subparagraphs (i),(ii) and (iii) shall serve for an initial term of two (2) years and one (1) member shall be appointed from each county. The members designated in subparagraphs (iv) and (v) shall serve an initial term of four (4) years. All terms after the initial terms shall be for a period of four (4) years.

(d) Any vacancy in the office of an appointed member of the advisory commission shall be filled by appointment by the Governor for the balance of the unexpired term.

(3) Each member shall have a demonstrated history of involvement in the matter of jurisdiction for which he is appointed to represent and his employment and activities must not conflict with the matter of jurisdiction represented. A member shall not have a record of conviction of violation of fish and game or seafood laws or regulations within the five (5) years preceding his appointment or a record of any felony conviction. After July 1, 1999, if a member is convicted of a violation of the seafood laws during his term, his office shall be deemed vacant and the Governor shall fill the vacancy as provided in this section.

(4) The advisory commission shall elect a chairman who shall preside at all meetings of the commission, and the advisory commission shall also elect a vice chairman who shall serve in the absence or inability of the chairman.

(5) Each member shall be paid actual and necessary expenses incurred in attending meetings of the advisory commission and in performing his duties away from his domicile under assignment by the advisory commission. In addition, members shall receive the per diem authorized in Section 25-3-69.

(6) The advisory commission shall adopt rules and regulations governing times and places of meetings.

(7) The advisory commission shall not take any action without the approval of the Department of Marine Resources, and such action shall be included in the minutes of the advisory commission. A majority of the members shall constitute a quorum of the advisory commission.

(8) The advisory commission shall advise the Department of Marine Resources on how to devise a plan to make licenses available in each coastal county.

(9)(a) There is hereby created a Marine Resources Technical Advisory Council composed of the Executive Director of the Gulf Coast Research Lab, or his designee; the Executive Director of the Department of Environmental Quality, or his designee; and the Executive Director of the Department of Wildlife, Fisheries and Parks, or his designee.

(b) The council shall give technical assistance to the department.

(10) For purposes of this section the following definitions apply:

(a) "Charter boat operator" means an individual who operates a vessel for hire, guiding sports fishermen for a fee and is duly licensed to engage in such activity in the State of Mississippi.

(b) "Commercial fisherman" means a fisherman who sells, barters or exchanges any or all of his catch or who is paid for attempting to catch marine species, and is duly licensed to engage in commercial fishing.

(c) "Commercial seafood processor" means an individual who engages in the business of purchasing seafood products and preparing them for resale and who is duly licensed to engage in such commercial activity in the State of Mississippi.

(d) "Incorporated environmental nonprofit organization" means an organization duly incorporated in any state as a nonprofit organization and whose stated goals and purposes are the conservation of natural resources.

(e) "Recreational sports fisherman" means an individual who catches or harvests marine species only for recreation or personal consumption and not for sale. The individual must possess a saltwater sports fishing license, be a member of an incorporated nonprofit sports fishing organization and not possess a commercial fishing or seafood processor license.

HISTORY: Laws, 1994, ch. 578, § 1; Laws, 1999, ch. 585, § 5, eff from and after July 1, 1999; Laws, 2020, ch. 418, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment inserted "advisory" preceding "commission" wherever it appears; rewrote (1), which read: "The Mississippi Commission on Marine Resources is hereby established and full power is vested in the commission to regulate all matters pertaining to all saltwater aquatic life and marine resources. The commission shall administer the Coastal Wetlands Protection Law and the Public Trust Tidelands Act. The power and duties of the commission shall be exercised through the Department of Marine Resources."; deleted "Mississippi Code of 1972" at the end of (5); deleted "and shall adopt bylaws governing the manner of conducting its business. Each member shall take the oath prescribed by Section 268 of the Mississippi Constitution of 1890 and shall, before assuming office, enter into bond in the amount of Thirty Thousand Dollars ($30,000.00), to be approved by the Secretary of State conditioned according to law and payable to the State of Mississippi" at the end of (6); substituted "without the approval of the Department of Marine Resources" for "except by vote in meeting assembled" in (7); rewrote (8); and substituted "department" for "commission" in (9)(b).

§ 49-15-303. Powers and duties of advisory commission.

The advisory commission shall have the following powers and duties:

(a) To advise the department regarding marine resources within the jurisdiction of the department;

(b) To advise the executive director on whether to execute contracts, grants and cooperative agreements with any public or private institution, federal or state agency or any subdivision thereof to carry out the duties of the commission; and

(c) To advise the department on whether to adopt, amend or repeal any rules and regulations necessary for the operation of the department necessary for the protection, conservation and propagation of seafood, and necessary for the management of commercial and recreational taking of seafood.

HISTORY: Laws, 1994, ch. 578, § 2; Laws, 1999, ch. 558, § 4, eff from and after passage (approved Apr. 21, 1999); Laws, 2020, ch. 418, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment inserted "advisory" preceding "commission" wherever it appears; rewrote (1), which read: "The Mississippi Commission on Marine Resources is hereby established and full power is vested in the commission to regulate all matters pertaining to all saltwater aquatic life and marine resources. The commission shall administer the Coastal Wetlands Protection Law and the Public Trust Tidelands Act. The power and duties of the commission shall be exercised through the Department of Marine Resources."; deleted "Mississippi Code of 1972" at the end of (5); deleted "and shall adopt bylaws governing the manner of conducting its business. Each member shall take the oath prescribed by Section 268 of the Mississippi Constitution of 1890 and shall, before assuming office, enter into bond in the amount of Thirty Thousand Dollars ($30,000.00), to be approved by the Secretary of State conditioned according to law and payable to the State of Mississippi" at the end of (6); substituted "without the approval of the Department of Marine Resources" for "except by vote in meeting assembled" in (7); rewrote (8); and substituted "department" for "commission" in (9)(b).

§ 49-15-304. Promulgation of regulations regarding marine resources.

The department, with the advice of the advisory commission, may adopt, modify or repeal rules or regulations to utilize, manage, conserve, preserve and protect the flora, fauna, tidelands, coastal wetlands, coastal preserves, marine waters and any other matter pertaining to marine resources under its jurisdiction. Rules and regulations adopted by the department shall be consistent with the public policy expressed in Section 29-15-3 (public trust tidelands), Section 39-7-3 (antiquities and historic preservation), Section 49-15-1 (seafood), Section 49-17-3 (pollution control), Section 49-27-3 (coastal wetlands protection) and Section 57-15-6 (coastal zone management). The department may make exceptions to and grant variances from any rules and regulations adopted by the department. The department shall give due consideration to permissable uses of the natural resources within its jurisdiction when promulgating rules and regulations.

HISTORY: Laws, 2000, ch. 618, § 1, eff from and after passage (approved May 23, 2000); Laws, 2020, ch. 418, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment inserted "department, with the advice of the advisory" in the first sentence; and substituted "department" for "commission" everywhere else it appears.

§ 49-15-305. Executive director; nomination; powers and duties.

(1) The Governor shall appoint the Executive Director of the Department of Marine Resources, with the advice and consent of the Senate, who shall serve at the will and pleasure of the Governor. The executive director shall be knowledgeable and experienced in marine resources management.

(2) The executive director of the department shall have the following powers and duties:

(a) To supervise and direct all administrative, inspection and technical activities and personnel of the department;

(b) To employ qualified professional personnel in the subject matter or fields, and any other technical and clerical staff as may be required for the operation of the department;

(c) To coordinate all studies in the State of Mississippi concerned with the supply, development, use and conservation of marine resources;

(d) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at any other times as may be required by the Legislature or Governor, a full report of the work of the department, including a detailed statement of expenditures of the department and any recommendations the department may have;

(e) To enter into cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with studies and investigations pertaining to marine resources, provided the agreements do not have a financial cost in excess of the amounts appropriated for the purposes by the Legislature; and

(f) To carry out all regulations and rules adopted by the department and enforce all licenses and permits issued by the department.

HISTORY: Laws, 1994, ch. 578, § 4; Laws, 1999, ch. 558, § 5, eff from and after passage (approved Apr. 21, 1999); Laws, 2020, ch. 418, § 5, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment rewrote (1), which read: "The commission shall submit three (3) nominees for the position of executive director to the Governor. The Governor shall appoint the executive director from the list of nominees with the advice and consent of the Senate. The commission may remove the executive director from office for good cause. The executive director shall be knowledgeable and experienced in marine resources management"; and in (f), substituted "department" for "commission."

§ 49-15-307. Powers and duties of department.

The department shall have the following powers and duties:

(a) To implement the policy of the department regarding marine resources within the jurisdiction of the department;

(b) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(c) To commission or conduct studies designed to determine alternative methods of managing and conserving the marine resources of this state in a manner to ensure efficiency and sustained productivity;

(d) To issue permits and licenses authorized by law or regulation;

(e) To equip and supply check stations, remote duty stations and personnel for extended duty;

(f) To develop programs to enhance the marketing of the state's recreational and commercial marine resources;

(g) To provide gear, insignias, and otherwise equip personnel subject to the amount appropriated for those purposes; and

(h) To discharge any other duties, responsibilities and powers as are necessary to implement this chapter.

HISTORY: Laws, 1994, ch. 578, § 5; Laws, 1999, ch. 558, § 6, eff from and after passage (approved Apr. 21, 1999); Laws, 2020, ch. 418, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (a), substituted "department" for "commission"; and in (c), substituted "ensure" for "insure."

§ 49-15-323. Department to have jurisdiction over certain violations of marine resources law or regulations committed in the Gulf of Mexico outside state's territorial waters.

If any violation of any marine resources law or regulation is alleged to have been committed in the Gulf of Mexico outside of the state's territorial waters where the state has jurisdiction over the recreational or commercial fishing vessel, under the Magnuson-Stevens Fishery Conservation and Management Act, 16 USCS Section 1856, or any other provision of federal law, the Department of Marine Resources shall have jurisdiction of the offense and may commence administrative enforcement action against alleged violators in accordance with the administrative procedures provisions of Section 49-15-401 et seq., Mississippi Code of 1972.

HISTORY: Laws, 2008, ch. 372, § 1, eff from and after July 1, 2008; Laws, 2021, ch. 404, § 9, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by substituting "Section 49-15-401 et seq." for "M.C.A. Section 49-15-401, et seq." at the end of the section. The Joint Committee ratified the correction at its August 12, 2019, meeting.

Amendment Notes — The 2021 amendment substituted "Department of Marine Resources" for "Commission on Marine Resources."

§ 49-15-325. Suspension or revocation of license.

(1) The commission is authorized to suspend any license issued to any person under this chapter for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(2) If a person does not comply with a summons or a citation or does not pay a fine, fee or assessment for violating a seafood law or regulation, the

commission may revoke the applicable license of that person. When a person does not comply or fails to pay, the clerk of the court shall notify the person in writing by first-class mail that if the person does not comply or pay within ten (10) days from the date of mailing, the court will notify the commission and the commission will revoke the license of that person. The cost of notice may be added to other court costs. If the person does not comply or pay as required, the court clerk shall immediately mail a copy of the court record and a copy of the notice to the commission. After receiving notice from the court, the commission shall revoke the applicable license of that person.

(3) A person whose license has been revoked under subsection (2) of this section shall remain revoked until the person can show proof that all obligations of the court have been met.

HISTORY: Laws, 2015, ch. 393, § 1, eff from and after passage (approved Mar. 18, 2015).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (3) by substituting "revoked under subsection (2) of this section" for "revoked under this subsection." The Joint Committee ratified the correction at its August 17, 2015, meeting.

ARTICLE 7.

ADMINISTRATIVE HEARING PROCEDURE FOR DEPARTMENT OF MARINE RESOURCES.

Sec.

49-15-401. Purpose; department not to seek both administrative and criminal penalties except under limited circumstances.

49-15-403. Complaint; executive director of department to review each complaint for reasonable grounds to indicate violation; director may impose fine where reasonable grounds exist; violator may request informal settlement conference; director to make final decision regarding penalty.

49-15-405. Hearing to be scheduled upon request of alleged violator; transcript of hearing; hearing officer empowered to require attendance of witnesses, administer oaths, and hear testimony; subpoena power; hearing officer's recommendations regarding violation; final decision by executive director regarding violation and penalties.

49-15-407. Waiver of right to hearing.

49-15-409. Jurisdiction; rules and regulations.

49-15-411. Judicial review.

49-15-413. Civil penalties for violations.

49-15-415. Payment of penalties; sums collected paid into Seafood Fund.

§ 49-15-401. Purpose; department not to seek both administrative and criminal penalties except under limited circumstances.

It is the purpose of this article to establish an administrative hearing procedure for the Mississippi Department of Marine Resources to enforce the

rules and regulations set forth in Title 22 of the Administrative Code and Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71, 59-21-111, and such other statutes within the jurisdiction of the Department of Marine Resources. Unless specifically authorized, the department shall not seek both administrative and criminal penalties against violators of the statutes referred to herein for the same offense, except as provided in Section 49-15-63.

HISTORY: Laws, 2005, ch. 422, § 1, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by inserting the words "of the" preceding "Administrative Code" in the first sentence. The Joint Committee ratified the correction at its August 20, 2021, meeting.

Amendment Notes — The 2021 amendment, in the first sentence, substituted "Mississippi Department of Marine Resources" and "Department of Marine Resources" for "Commission on Marine Resources," and "regulations set forth in Title 22 of the Administrative Code" for "regulations of the commission"; in the second sentence, substituted "department" for "commission"; and deleted the former last sentence, which read: "The commission will notify the Department of Marine Resources of violations to bring forward for administrative penalty processing."

§ 49-15-403. Complaint; executive director of department to review each complaint for reasonable grounds to indicate violation; director may impose fine where reasonable grounds exist; violator may request informal settlement conference; director to make final decision regarding penalty.

(1) When any allegation or charge in the form of a complaint has been made against a person for violations pursuant to the authorities outlined in Section 49-15-401 and such matter has been brought before the department for administrative penalty processing, the department shall:

(a) Cause the complaint to be in writing, signed by the person and/or office making the charge and include the recommended fine;

(b) Ensure that the complaint is filed with the executive director;

(c) Cause the executive director of the department, or his designee, to review the complaint; and

(d) Send or deliver a copy of the complaint and any supporting documents to the alleged violator along with a request for the alleged violator to respond to the allegations within thirty (30) days. The notification shall be accomplished by any of the methods provided for by the Mississippi Rules of Civil Procedure. Citations issued at the time of the alleged violation by marine enforcement officers shall constitute sufficient notice.

(2) Upon receipt of the response and any supporting documents from the alleged violator, the executive director, or his designee, shall review all information on file to determine the merit of the complaint. If the executive director, or his designee, determines that the complaint lacks merit, the executive director may dismiss the complaint.

(3) If the executive director, or his designee, determines that there are reasonable grounds to indicate that a violation has occurred or if the alleged violator admits to the truth of the allegations upon which the complaint is based, the executive director may impose a fine not to exceed Ten Thousand Dollars ($10,000.00) for each violation. The executive director shall send a copy of the imposed fine to the alleged violator.

(4) The alleged violator shall have fifteen (15) days from receipt of the finding and imposed fine of the executive director within which to file a written request for an informal settlement conference with the executive director, or his designee. If the alleged violator requests a conference, the executive director, or his designee, shall meet with the alleged violator to discuss the proposed penalty and the possibility of an agreed settlement. The alleged violator may present evidence and written or oral comments at the executive director's conference. The alleged violator may be represented by legal counsel, at his or her own expense. If, in the judgment of the executive director, or his designee, a reasonable settlement is reached, the recommended penalty shall be revised accordingly. The executive director shall make the final decision regarding the penalty to be issued, which may include dismissal of the complaint, issuance of a warning in lieu of a penalty or a monetary penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation. If a request for information settlement is not received within the timeframe provided, the executive director's imposed fine will be the final decision.

HISTORY: Laws, 2005, ch. 422, § 2, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 2, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (1), substituted "violations pursuant to the authorities outlined in Section 49-15-401" for "violating the rules and regulations of the commission" and "department" for "commission" twice; in (1)(a), inserted "and/or office," "and include the recommended fine," and made a related change, and rewrote (1)(b) and (c), which read: "(b) Insure that the complaint is filed in the office of the commission; (c) Cause the complaint to be reviewed by the executive director of the department, or his designee; and"; in (2), substituted "dismiss the complaint" for "recommend that the complaint be dismissed" at the end; in (3), substituted "impose a fine" for "recommend to the commission a fine," and substituted "recommended fine to the alleged violator" for "recommendation to the alleged violator and the commission"; in (4), in the first sentence, substituted "receipt of the finding and recommended fine" for "receipt of the recommendation," and added the third and last two sentences; deleted former (4)(b), which related to the filing of a written request for a hearing by the alleged violator under certain circumstances; and deleted former (5), which read: "The commission shall consider the alleged violation and the recommendation of the department at a regularly scheduled meeting of the commission. In determining the amount of the penalty, the commission may consider the appropriateness of such penalty and the gravity of the violation. The commission may issue a warning in lieu of proposing a penalty."

§ 49-15-405. Hearing to be scheduled upon request of alleged violator; transcript of hearing; hearing officer empowered to require attendance of witnesses, administer oaths, and hear testimony; subpoena power; hearing officer's recommendations regarding violation; final decision by executive director regarding violation and penalties.

(1) If the alleged violator requests a formal hearing within thirty (30) days from the receipt of the finding and imposed fine, or within fifteen (15) days from the receipt of the executive director's decision following the information settlement, the executive director shall designate a representative of the Attorney General's office to preside over the hearing and render a finding and recommendation as provided in this section.

(2) A duly qualified court reporter shall be in attendance and shall make a full and complete transcript of the proceedings. The hearing shall be closed unless the alleged violator requests a public hearing. The hearing officer shall have the right and duty to impose reasonable restrictions as he may deem necessary or appropriate to ensure orderly, expeditious and impartial proceedings, and shall admit all relevant and material evidence except evidence which is unduly repetitious. Hearsay shall be admissible to the extent permitted by the hearing officer.

(3) For purposes of such hearing, the hearing officer is hereby empowered to require the attendance of witnesses, administer oaths and hear testimony, either oral or documentary, for and against the alleged violator. The hearing officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence at a hearing. Subpoenas to be issued shall be delivered to the sheriff of the county where they are to be executed and the sheriff shall serve them. In case of the failure of any person to comply with any subpoena issued by the hearing officer, the hearing officer may invoke the aid of any court of general jurisdiction of this state. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to comply with the order of the court may be treated as contempt thereof.

(4) At the conclusion of the hearing, the hearing officer shall issue a written recommendation incorporating his findings of facts and conclusions of law regarding whether a violation has occurred and the appropriate penalty, if any, that he may assess not to exceed Ten Thousand Dollars ($10,000.00) per violation.

(5) The hearing officer's recommendation shall then be forwarded to the executive director who will make the final decision regarding whether a violation has occurred and the appropriate penalty, if any.

(6) The executive director's final decision shall be delivered to the alleged violator.

HISTORY: Laws, 2005, ch. 422, § 3, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 3, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (1) by substituting "receipt of the finding and imposed fine" for "receipt of the finding and recommended fine, and in subsection (2) by substituting "necessary or appropriate to ensure orderly, expeditious and impartial proceedings" for "necessary or appropriate to ensure an orderly, expeditious and impartial proceedings." The Joint Committee ratified the corrections at its August 20, 2021, meeting.

Amendment Notes — The 2021 amendment rewrote (1), which related to the duties of the commission regarding notification that alleged violator is requesting a hearing; deleted former (2), which allowed the commission to designate member(s) of commission or representative of Attorney General's office to preside over and render findings and recommendations in lieu of hearing before full commission; redesignated former (3) through (5) as (2) through (4); substituted "hearing officer" for "commission" throughout (2) and the first three times it appears in (3), and for "commission or its authorized representative" the last time it appears; in (4), substituted "hearing officer" for commission, upon the majority vote of the members present," "recommendation" for "opinion," and "his findings" for "its findings," inserted "regarding whether a violation has occurred," substituted "the appropriate penalty, if any, that he may" for "any penalty that it may," and deleted the former last sentence, which read: "The executive officer shall notify the alleged violator of the commission's decision"; and added (5) and (6).

§ 49-15-407. Waiver of right to hearing.

Failure of the alleged violator to request an informal settlement conference, a hearing, or to respond to the complaint within thirty (30) days shall constitute a waiver of the right to a hearing, and any penalties assessed by the executive director shall be due and payable as provided in Section 49-15-415.

HISTORY: Laws, 2005, ch. 422, § 4, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 4, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment substituted "executive director" for "commission"; and made minor punctuation changes.

§ 49-15-409. Jurisdiction; rules and regulations.

The department shall have jurisdiction over all persons and property necessary to administer and enforce the provisions of this article and the authorities outlined in Section 49-15-401. The department may adopt rules and regulations to implement the provisions of this article.

HISTORY: Laws, 2005, ch. 422, § 5, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 5, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment substituted "department" for "commission" twice; and substituted "authorities outlined in Section 49-15-401" for "rules and regulations of the commission."

§ 49-15-411. Judicial review.

(1) Any individual aggrieved by a final decision of the executive director shall be entitled to judicial review.

(2) Any appeal from the executive director's decision shall be filed in the Chancery Court of the Second Judicial District of Harrison County, Mississippi, on the record made, including a verbatim transcript of the testimony at the hearing held before the hearing officer. The appeal shall be filed within thirty (30) days after notification of the final decision of the executive director is mailed or served, and the proceedings in chancery court shall be conducted as other matters coming before the court on appeal. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all estimated costs, including the cost of preparation of the record of the proceedings before the executive director, and the filing of a bond in the sum of Five Hundred Dollars ($500.00) conditioned that if the executive director's final decision be affirmed by the chancery court, the aggrieved party shall pay the costs of the appeal to the chancery court.

(3) The scope of review of the chancery court in such cases shall be limited to a review of the record made before the executive director's final decision to determine if the decision is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the individual.

(4) No relief shall be granted based upon the court's finding of harmless error by the executive director in complying with the procedural requirements of this article. If there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by action of the chancery court may appeal to the State Supreme Court in the manner provided by law.

HISTORY: Laws, 2005, ch. 422, § 6, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 6, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment substituted "executive director's" and "executive director" for "commission's" and "commission" everywhere it appears in (1) and (4); in (2), substituted "executive director's" and "executive director" for "commission's" and "commission" the first three times it appears, substituted "hearing officer" for "commission," in the second sentence, inserted "final," and in the last sentence, substituted "executive director's final decision" for "action of the commission"; and in (3), substituted "executive director's final decision to determine if the decisions is unlawful" for "commission to determine if the action of the commission is unlawful."

§ 49-15-413. Civil penalties for violations.

Each violation of the rules and regulations set forth in Title 22 of the Administrative Code or violations of the statutes set forth in Chapters 15 and 27 of Title 49, and Chapter 21 of Title 59, Mississippi Code of 1972, shall be subject to the imposition of a civil penalty up to Ten Thousand Dollars ($10,000.00).

HISTORY: Laws, 2005, ch. 422, § 7, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 7, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment substituted "regulations set forth in Title 22 of the Administrative Code" for "regulations of the commission."

§ 49-15-415. Payment of penalties; sums collected paid into Seafood Fund.

(1) Any penalty assessed by the department shall be due and payable within forty-five (45) days of the notification of the decision. All sums of money collected as a result of criminal or civil penalties levied under this article shall be paid into the Seafood Fund created and described in Section 49-15-17.

(2) If the judgment is not paid within the forty-five (45) days, or within such additional time as the department may allow, the department may file suit in the chancery court of the county where the defendant resides or in the case of a nonresident defendant in the Chancery Court of the Second Judicial District of Harrison County or any other court with appropriate jurisdiction to enforce the decision of the executive director and recover reasonable attorney's fees and all court costs.

(3) A copy of the notification sent by the department to the violator shall be sufficient proof as to the judgment of the department.

HISTORY: Laws, 2005, ch. 422, § 8, eff from and after July 1, 2005; Laws, 2021, ch. 404, § 8, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment substituted "department" for "commission" everywhere it appears in (1) and (3); and in (2), substituted "executive director" for "commission."

CHAPTER 17.

POLLUTION OF WATERS, STREAMS, AND AIR

In General. 49-17-1
Water Pollution Control Revolving Fund. 49-17-81
Mississippi Underground Storage Tank Act of 1988. 49-17-401
Lead-Based Paint Activity Accreditation and Certification Act. 49-17-501
Mississippi Gulf Region Utility Act. 49-17-701

IN GENERAL

Sec.
49-17-14. Title V air operating permit program; program fee trust fund; expenditures for authorized purposes.
49-17-16. Advisory Council.
49-17-29. Permit Board; prohibitions; air and water permits; solid waste and hazardous permits; permit hearings; permit appeals.
49-17-30. Title V permit fees.
49-17-32. Collection of fees.

§ 49-17-14. Title V air operating permit program; program fee trust fund; expenditures for authorized purposes.

(1) "Title V program" means, as used in Sections 49-17-1 through 49-17-

45, the air operating permit program mandated in Title V of the 1990 amendments to the federal Clean Air Act, codified in 42 USCS Section 7661, et seq.

(2) There is created in the State Treasury a fund to be designated as the "Air Operating Permit Program Fee Trust Fund," referred to hereinafter as the "fund."

(3) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(4) The fund may receive monies from any available public or private source including, but not limited to, collection of fees, interest, grants, taxes, public and private donations and judicial actions.

(5) To facilitate the proper administration of the fund, the commission is authorized to promulgate rules and regulations for the administration of the fund.

(6) The commission shall expend or utilize monies in the fund by an annual appropriation approved by the Legislature to pay all reasonable direct and indirect costs associated with the development and administration of the Title V program including, but not limited to, the reasonable costs of the following activities as they relate to the Title V program:

(a) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(b) Reviewing and acting on any application for a permit, permit modification or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit modification or renewal;

(c) Administering the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(d) Implementing and enforcing the terms of any Title V permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(e) Emissions and ambient monitoring;

(f) Modeling, analyses, or demonstrations;

(g) Preparing inventories and tracking emissions;

(h) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program under Section 507 of the federal Clean Air Act in determining and meeting their obligations under this section; and

(i) Providing funding to the Advisory Council created in Section 49-17-16 in an amount reasonably sufficient to meet the Advisory Council's obligations under Sections 49-17-1 through 49-17-45.

(7) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year. If the fund balance at the end of the fiscal year exceeds thirty-three percent (33%) of the projected annual costs of administering the program, the assessment rates may be adjusted to

reduce the future projected fund balance. If necessary, the assessment rates shall be adjusted during the setting of the next fee schedule.

(8) At no time shall a fee be assessed that results in a projected ending fund balance of more than the current annual cost of administering the Title V program.

(9) No such fees shall be utilized by the Department of Environmental Quality or any other person for any purpose or purposes other than those purposes required by Sections 49-17-1 through 49-17-45, as they relate to the Title V program.

HISTORY: Laws, 1993, ch. 611, § 1, eff from and after passage (approved April 16, 1993); Laws, 2020, ch. 352, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment in (7), deleted the former last two sentences, which read: "If the annual fees collected exceed the cost of administering the Title V program for that fiscal year, then the excess shall be applied to the cost of administering the program for the succeeding fiscal year. In the succeeding fiscal year, the total to be collected from fees shall be reduced by the excess retained in the fund and the assessment rates shall be adjusted proportionately," and added the present last two sentences; added (8); and redesignated former (8) as (9), and therein added "as they relate to the Title V program."

§ 49-17-16. Advisory Council.

(1)(a) An Advisory Council, hereinafter referred to as "Advisory Council," is created to conduct an independent study of the costs for the development and administration of the Title V program within the Department of Environmental Quality and to conduct an annual review of the costs of administering such programs.

(b) The costs to be included within the study for the Title V program shall be those costs set forth in Section 49-17-14. After completing a study of the program needs and costs, the Advisory Council shall recommend an equitable fee system for the Title V program. The annual review of the Title V program shall determine if the fee system is collecting sufficient funds to meet the program needs. The Advisory Council shall recommend an appropriate fee schedule for the upcoming fee year and, if necessary, recommend changes to the existing fee system so that sufficient funds are collected through an equitable fee system. Each annual review report shall be due January 1 of each year to the commission and the Executive Director of the Department of Environmental Quality.

(2) The Department of Environmental Quality shall assist the Advisory Council by providing any information the Advisory Council may require to perform its duties under Sections 49-17-1 through 49-17-45.

(3) The Advisory Council shall be composed of the following seven (7) persons appointed as follows: three (3) representatives of industries that qualify for inclusion under the Title V program, that are required to pay the program fee, with one (1) such representative to be appointed by the Governor, one (1) by the Lieutenant Governor and one (1) by the Speaker of the House of

Representatives; the Executive Director of the Mississippi Development Authority; the President of the Mississippi Manufacturers Association; the President of the Mississippi Farm Bureau Federation; and the Chairman of the Mississippi Small Business Compliance Advisory Panel. Nonappointed members of the Advisory Council may designate an alternate member to act in their stead in performing any function of the Advisory Council. The length of term for each member of the Advisory Council shall be four (4) years. Members of the Advisory Council may serve successive and multiple terms.

(4) Vacancies on the Advisory Council shall be filled by appointment in the same manner as the original appointments.

(5) The Advisory Council shall select from their membership a chairperson to preside over meetings and a vice chairperson to preside in the absence of the chairperson or when the chairperson shall be excused. The Advisory Council shall adopt procedures governing the manner of conducting its business. A majority of the members shall constitute a quorum to do business.

(6) Members of the Advisory Council shall serve without salary. The members of the Advisory Council shall be entitled to receive reimbursement of their actual travel and hotel expenses as provided in Section 25-3-41, incurred while in the performance of their duties as members of the Advisory Council to be paid on an itemized statement approved by the State Fiscal Officer. Expenses shall be paid from fees collected in accordance with Section 49-17-30.

(7) The Executive Director of the Department of Environmental Quality shall provide technical, clerical and other support services, including services by contract, as the Advisory Council determines that it requires in the performance of its functions.

HISTORY: Laws, 1993, ch. 611, § 2, eff from and after passage (approved April 16, 1993); Laws, 2020, ch. 352, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment rewrote (1)(b), and (2) through (4).

§ 49-17-28. Permit board; membership; compensation.

JUDICIAL DECISIONS

1. In general.

Substantial evidence supported the Mississippi Environmental Quality Permit Board's (Permit Board) granting of a siting variance and permit to expand a poultry farm, over a neighbor's objections, because the Permit Board permissibly considered (1) that the neighbor rebuilt the neighbor's home within 600 feet of an approved facility, and (2) the neighbor's motives for contesting the variance and permit. Taylor v. Miss. Envtl. Quality Permit Bd., 205 So. 3d 1129, 2016 Miss. App. LEXIS 164 (Miss. Ct. App.), cert. denied, 205 So. 3d 1082, 2016 Miss. LEXIS 529 (Miss. 2016).

Poultry farm owner's failure to give a neighbor 180 days' notice of intended construction, and the owner's illegal operation of a poultry farm without a permit and within a buffer zone, did not bar the Mississippi Environmental Quality Permit Board (Permit Board) from granting the owner a variance from siting criteria and a permit because the Permit Board (1) considered the owner's noncompliance and (2) had the authority to grant the variance and permit nonetheless. Taylor v.

Miss. Envtl. Quality Permit Bd., 205 So. 3d 1129, 2016 Miss. App. LEXIS 164 (Miss. Ct. App.), cert. denied, 205 So. 3d 1082, 2016 Miss. LEXIS 529 (Miss. 2016).

§ 49-17-29. Permit Board; prohibitions; air and water permits; solid waste and hazardous permits; permit hearings; permit appeals.

(1)(a) Except as in compliance with paragraph (b) of this subsection, it is unlawful for any person to cause pollution of the air in the state or to place or cause to be placed any wastes or other products or substances in a location where they are likely to cause pollution of the air. It is also unlawful to discharge any wastes, products or substances into the air of the state which exceed standards of performance, hazardous air pollutant standards, other emission standards set by the commission, or which reduce the quality of the air below the air quality standards or increments established by the commission or prevent attainment or maintenance of those air quality standards. Any such action is hereby declared to be a public nuisance.

(b) It is unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless that person holds a permit from the Permit Board (except repairs or maintenance of equipment for which a permit has been previously issued), or unless that person is exempted from holding a permit by a regulation promulgated by the commission. Concentrated animal feeding operations may be a source or a category of sources exempted under this paragraph. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on June 1, 1998.

(2)(a) Except as in compliance with paragraph (b) of this subsection, it is unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. It is also unlawful to discharge any wastes into any waters of the state which reduce the quality of those waters below the water quality standards established by the commission; or to violate any applicable pretreatment standards or limitations, technology-based effluent limitations, toxic standards or any other limitations established by the commission. Any such action is declared to be a public nuisance.

(b) It is unlawful for any person to carry on any of the following activities, unless that person holds a current permit for that activity from the Permit Board as may be required for the disposal of all wastes which are or may be discharged into the waters of the state, or unless that person is exempted from holding a permit by a regulation promulgated by the commission: (i) the construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto, including, but not limited to, systems serving agricultural operations; (ii) the increase in volume or strength of any wastes in excess of the permissive

discharges specified under any existing permit; (iii) the construction, installation or operation of any industrial, commercial or other establishment, including irrigation projects or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; (iv) the construction or use of any new outlet for the discharge of any wastes into the waters of the state. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on June 1, 1998.

(3)(a) Except as otherwise provided in this section, the Permit Board created by Section 49-17-28 shall be the exclusive administrative body to make decisions on permit issuance, reissuance, denial, modification or revocation of air pollution control and water pollution control permits and permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17), and all other permits within the jurisdiction of the Permit Board. After consideration of alternative waste treatment technologies available to control air and water pollution and odor, including appropriate siting criteria, the commission may promulgate regulations establishing conditions, limitations and exemptions under which the Permit Board shall make these decisions. Regulations promulgated by the commission which establish exemptions as authorized under this section shall apply to any applicable facility in operation on the effective date of that regulation and to any applicable facility constructed or operated after the effective date of that regulation. The Permit Board may issue multiple permits for the same facility or operation simultaneously or in the sequence that it deems appropriate consistent with the commission's regulations. Except as otherwise provided in this paragraph, the Permit Board, under any conditions that the board may prescribe, may authorize the Executive Director of the Department of Environmental Quality to make decisions on permit issuance, reissuance, denial, modification or revocation. The executive director shall not be authorized to make decisions on permit issuance, reissuance, denial, modification or revocation for a commercial hazardous waste management facility or a solid waste management permit for a municipal solid waste landfill or incinerator. A decision by the executive director shall be a decision of the Permit Board and shall be subject to formal hearing and appeal as provided in this section. The executive director shall report all permit decisions to the Permit Board at its next regularly scheduled meeting and those decisions shall be recorded in the minutes of the Permit Board. The decisions of the Permit Board shall be recorded in minutes of the Permit Board and shall be kept separate and apart from the minutes of the commission. The decision of the Permit Board or the executive director to issue, reissue, deny, modify or revoke permits shall not be construed to be an order or other action of the commission.

(b) The Executive Director of the Department of Environmental Quality shall also be the Executive Director of the Permit Board and shall have available to him, as Executive Director of the Permit Board, all resources and personnel otherwise available to him as executive director of the department.

(c) All persons required to obtain an air pollution control or water pollution control permit, a permit under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within the jurisdiction of the Permit Board shall make application for that permit with the Permit Board. The Permit Board, under any regulations as the commission may prescribe, may require the submission of those plans, specifications and other information as it deems necessary to carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter 17, or to carry out the commission's regulations adopted under those sections. The Permit Board, based upon any information as it deems relevant, shall issue, reissue, deny, modify or revoke air pollution control or water pollution control permit or permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within the jurisdiction of the Permit Board under any conditions as it deems necessary that are consistent with the commission's regulations. The Permit Board's action of issuance, reissuance, denial, modification or revocation of a permit as recorded in its minutes shall constitute a complete decision of the board. All permits issued by the Permit Board shall remain in full force and effect until the board makes a final determination regarding any reissuance, modification, or revocation thereof. The Permit Board shall take action upon an application within one hundred eighty (180) days following its receipt in the board's principal office. No action which affects revocation of an existing permit shall take effect until the thirty (30) days mentioned in paragraph (4)(b) of this section has expired or until a formal hearing as prescribed in that paragraph is held, whichever is later.

(d) The Permit Board may adopt rules of practice and procedure governing its proceedings that are consistent with the commission's regulations. All hearings in connection with permits issued, reissued, denied, modified or revoked and all appeals from decisions of the Permit Board shall be as provided in this section.

(e) Upon any conditions that are consistent with the commission's regulations and subject to those procedures for public notice and hearings as provided by law, not inconsistent with federal law and regulations, the Permit Board may issue general permits and, where appropriate, may consolidate multiple permits for the same facility or operation into a single permit.

(f) The Permit Board shall not issue any permit for a new swine concentrated animal feeding operation or the expansion of an existing swine concentrated animal feeding operation before January 1, 2000, unless the department received the application for that operation's new or modified permit before February 28, 1998, or except as provided in this paragraph (f). In issuing or modifying any permit for which the department received an

application before February 28, 1998, the Permit Board shall apply those siting criteria adopted or used by the commission before February 28, 1998, unless federal law or regulations require more stringent criteria. The moratorium established in this paragraph shall not apply to the issuance of any permit for a new swine concentrated animal feeding operation or the expansion of an existing swine concentrated animal feeding operation that uses an animal waste management system which the applicant demonstrates to the Permit Board is innovative in significantly reducing the effects of the operation on the public health, welfare or the environment and which is approved by the Permit Board. The Permit Board shall not issue or modify more than five (5) permits under this innovative animal waste management system technology exemption to the moratorium.

(g) Each applicant for a permit for a new outlet for the discharge of wastes into the waters of the state who is required to obtain a certificate of public convenience and necessity from the Public Service Commission for such wastewater system shall submit financial and managerial information as required by the Public Utilities Staff. Following review of that information, the Executive Director of the Public Utilities Staff shall certify in writing to the executive director of the department, the financial and managerial viability of the system if the Executive Director of the Public Utilities Staff determines the system is viable. The Permit Board shall not issue the permit until the certification is received.

(4)(a) Except as required by this section, before the issuance, reissuance, denial, modification or revocation of any air pollution control or water pollution control permit, permit required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within its jurisdiction, the Permit Board, in its discretion, may hold a public hearing or meeting to obtain comments from the public on its proposed action. Before the issuance, reissuance, denial, modification pertaining to the expansion of a facility, transfer or revocation of a permit for a commercial hazardous waste management facility or a solid waste management permit for a commercial municipal solid waste landfill or incinerator, the Permit Board shall conduct a public hearing or meeting to obtain comments from the public on the proposed action. That hearing or meeting shall be informal in nature and conducted under those procedures as the Permit Board may deem appropriate consistent with the commission's regulations.

(b) Within thirty (30) days after the date the Permit Board takes action upon permit issuance, reissuance, denial, modification or revocation, as recorded in the minutes of the Permit Board, any interested party aggrieved by that action may file a written request for a formal hearing before the Permit Board. An interested party is any person claiming an interest relating to the property or project which is the subject of the permit action, and who is so situated that the person may be affected by the disposition of that action.

The Permit Board shall fix the time and place of the formal hearing and shall notify the permittee of that time and place.

In conducting the formal hearing, the Permit Board shall have the same full powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to the hearings before it, with the additional power that the Executive Director of the Permit Board may issue all subpoenas at the instance of the Permit Board or at the instance of any interested party. Any subpoenas shall be served by any lawful officer in any county to whom the subpoena is directed and return made thereon as provided by law, with the cost of service being paid by the party on whose behalf the subpoena was issued. Witnesses summoned to appear at the hearing shall be entitled to the same per diem and mileage as witnesses attending the circuit court and shall be paid by the person on whose behalf the witness was called. Sufficient sureties for the cost of service of the subpoena and witness fees shall be filed with the Executive Director of the Permit Board at the time that issuance of the subpoena is requested. At a hearing, any interested party may present witnesses and submit evidence and cross-examine witnesses.

The Permit Board may designate a hearing officer to conduct the formal hearing on all or any part of the issues on behalf of the Permit Board. The hearing officer shall prepare the record of the formal hearing conducted by that officer for the Permit Board and shall submit the record to the Permit Board.

Upon conclusion of the formal hearing, the Permit Board shall enter in its minutes the board's decision affirming, modifying or reversing its prior decision to issue, reissue, deny, modify or revoke a permit. The Permit Board shall prepare and record in its minutes findings of fact and conclusions of law supporting its decision. That decision, as recorded in its minutes with its findings of fact and conclusions of law, shall be final unless an appeal, as provided in this section, is taken to chancery court within twenty (20) days following the date the decision is entered in the board's minutes.

(c) Within twenty (20) days after the date the Permit Board takes action upon permit issuance, reissuance, denial, modification or revocation after a formal hearing under this subsection as recorded in the minutes of the Permit Board, any person aggrieved of that action may appeal the action as provided in subsection (5) of this section.

(5)(a) Appeals from any decision or action of the Permit Board shall be only to chancery court as provided in this subsection.

(b) Any person who is aggrieved by any decision of the Permit Board issuing, reissuing, denying, revoking or modifying a permit after a formal hearing may appeal that decision within the period specified in subsection (4)(c) of this section to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed by the Permit Board and to be filed with and approved by the Executive Director of the Permit Board, who shall forthwith certify the filing

of the bond together with a certified copy of the record of the Permit Board in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided in this section shall not stay the decision of the Permit Board. The aggrieved party may, within twenty (20) days following the date the board's decision after a formal hearing is entered on the board's minutes, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant that appeal with supersedeas. If granted, the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the Permit Board. The chancery court shall always be deemed open for hearing of an appeal and the chancellor may hear the same in termtime or in vacation at any place in the chancellor's district, and the appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed. If prejudicial error is found the decision of the board shall be reversed and the chancery court shall remand the matter to the Permit Board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court, that party may apply for a supersedeas to the chancellor of that court, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result thereby; but otherwise, the chancellor shall require a supersedeas bond as the chancellor deems proper, which shall be liable to the state for any damage.

HISTORY: Codes, 1942, § 7106-118; Laws, 1966, ch. 258, § 8; Laws, 1972, ch. 505, § 6; Laws, 1973, ch. 373, § 1; Laws, 1977, ch. 327, § 7; Laws, 1981, ch. 528, § 15; Laws, 1991, ch. 561, § 1; Laws, 1992, ch. 583 § 15; Laws, 1996, ch. 335, § 1; Laws, 1998, ch. 537, § 2; Laws, 2002, ch. 401, § 1, eff from and after July 1, 2002; Laws, 2018, ch. 322, § 1, eff from and after July 1, 2018.

Amendment Notes —

The 2018 amendment inserted "solid waste management permit for a" in the sixth sentence of (3)(a) and in the second sentence of (4)(a).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
3. Appeals.

1. In general.

Penalty assessed against a contractor was well within the authority of the Mississippi Commission on Environmental Quality and was supported by substantial evidence of willfulness because the Mississippi Department of Environmental Quality showed that the contractor had continued his construction activities even though he had been warned he was in violation of the Mississippi Air and Water

Pollution Control Law. Gray v. Miss. Comm'n on Envtl. Quality, 174 So. 3d 956, 2015 Miss. App. LEXIS 478 (Miss. Ct. App. 2015).

Substantial evidence supported the finding of the Mississippi Commission on Environmental Quality that a contractor violated subsection (2) because the Mississippi Department of Environmental Quality saw him violate the statute on five separate occasions; by regulation, to avoid violating the statute, the contractor had to obtain a storm-water permit, something he undeniably did not do, and thus, his unpermitted land-disturbing construction activities were a clear violation. Gray v. Miss. Comm'n on Envtl. Quality, 174 So. 3d 956, 2015 Miss. App. LEXIS 478 (Miss. Ct. App. 2015).

3. Appeals.

Circuit court did not err in upholding the decision of the Mississippi Department of Environmental Quality Permit Board, which denied as untimely a competitor's request for a formal hearing on a permit issued to a limited liability company (LLC), because the Permit Board's interpretation of subsection (4)(b) was reasonable; there was no relief for the competitor's inaction because subsection (4)(b) provided finality to allow the permitting process to continue. Globe Metallurgical, Inc. v. Miss. Envtl. Quality Permit Bd., 192 So. 3d 1084, 2016 Miss. App. LEXIS 318 (Miss. Ct. App. 2016).

Mississippi Department of Environmental Quality Permit Board did not err in granting groundwater withdrawal permits to a county utility authority because the factors it considered were reasonable, it made specific findings as to each factor, and its findings were supported by substantial evidence; the utility authority owned the land upon which it would install wells for the groundwater withdrawal and planned to use the water for public water supply, the highest-ranked beneficial use of water. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096, 2014 Miss. LEXIS 69 (Miss. 2014).

§ 49-17-30. Title V permit fees.

(1) As a condition of Title V of the federal Clean Air Act, the owner or operator of any stationary source required to obtain an air operating permit under the Title V program, hereinafter referred to as a "Title V permit," shall pay to the Department of Environmental Quality an annual fee.

(2) To facilitate the proper administration of the Title V program, the commission is authorized to assess and collect fees from any stationary source subject to the Title V program. The commission shall establish the amount of each fee to cover the costs of the Title V program as provided in Section 49-17-14. The commission is further authorized to promulgate such rules and regulations as are necessary for the development and administration of the Title V program and the assessment and collection of the Title V program fees.

(3)(a) The fee schedule for Title V program fees shall be set annually by order of the commission in an amount sufficient to cover the reasonable costs of development and administration of the Title V program. The commission's order shall follow:

(i) Receipt of the report and recommendations of the Advisory Council, if timely received; and

(ii) A public hearing to be held not earlier than thirty (30) days following receipt by the commission of the report and recommendations of the Advisory Council.

(b) The commission may proceed with entry of the order on fees if the Advisory Council fails to submit its report in a timely manner.

(c) The order of the commission may be appealed in the manner set forth in Section 49-17-41.

(d) The determination of the fee set by order of the commission shall not be considered the promulgation of a regulation by the commission.

(e) The record of the public hearing shall be included in the record upon which the order is based and shall become a part of the appellate records for all appeals taken from the order of the commission establishing or modifying Title V program fees. Any undisputed amount due from an appellant must be paid according to the appellant's payment schedule during the pendency of the appeal.

(4) Any person required to pay the Title V program fee set forth under this chapter who disagrees with the calculation or applicability of the person's fee may petition the commission in writing for a hearing in accordance with Section 49-17-35. Such hearing shall be in accordance with Section 49-17-33. Any disputed portion of the fee for which a hearing has been requested will not incur any penalty or interest from and after the receipt by the commission of the hearing petition. The decision of the commission may be appealed in the manner set forth in Section 49-17-41.

(5) All fees collected pursuant to this section shall be deposited into the "Air Operating Permit Program Fee Trust Fund" established in Section 49-17-14.

HISTORY: Laws, 1993, ch. 611, § 3; Laws, 2012, ch. 321, § 1, eff from and after passage (approved Apr. 5, 2012); Laws, 2020, ch. 352, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment rewrote the section.

§ 49-17-32. Collection of fees.

(1) The commission may delegate to the Department of Environmental Quality the responsibility for the collection of the Title V program fees.

(2) The Title V program fee shall be due September 1 of each year. Each owner or operator may elect a quarterly payment method of four (4) equal payments with the payments due September 1, December 1, March 1 and June 1. The owner or operator shall notify the Department of Environmental Quality that the quarterly payment method will be used by September 1.

(3) If any part of the Title V program fee imposed is not paid within thirty (30) days after the due date, a penalty of ten percent (10%) of the amount due shall at once accrue and be added thereto, unless the permittee demonstrates to the commission that the failure to make timely payment was unavoidable due to financial hardship or otherwise beyond the permittee's control. If the fee is not paid in full, including any penalty within sixty (60) days of the due date, the Environmental Quality Permit Board may revoke the permit upon proper notice and hearing as required by law. Any penalty collected under this section shall be deposited into the "Air Operating Permit Program Fee Trust Fund."

(4) Any owner or operator that fails to properly identify themselves

subject to the Title V program may be subject to fees and penalties as determined by the commission.

(5) It is the intent of the Legislature that fees collected pursuant to Sections 49-17-1 through 49-17-45 shall not supplant or reduce in any way the General Fund appropriation to the Department of Environmental Quality.

HISTORY: Laws, 1993, ch. 611, § 4; Laws, 1995, ch. 510, § 1, eff from and after passage (approved March 29, 1995); Laws, 2020, ch. 352, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment rewrote (2), which read: "The air operating permit fee shall be due September 1 of each year. Any facility which proposes to use actual emissions as the basis for the fee calculation shall submit by July 1 of each year an inventory of emissions for the previous calendar year. For facilities using actual emissions as the basis of the fee, the fee shall be calculated based upon emissions during the previous calendar year. For facilities using allowable emissions as the basis for the fee, the fee shall be calculated based upon the allowable emissions contained in the permit on the date of the invoice. A permit holder may elect a quarterly payment method of four (4) equal payments with the payments due September 1, December 1, March 1, and June 1. The permit holder shall notify the Department of Environmental Quality that the quarterly payment method will be used by September 1"; in (3), substituted "Title V program fee" for "air operating permit fee"; added (4); and redesignated former (4) as (5).

§ 49-17-43. Penalties.

JUDICIAL DECISIONS

1. In general.

Penalty assessed against a contractor was well within the authority of the Mississippi Commission on Environmental Quality and was supported by substantial evidence of willfulness because the Mississippi Department of Environmental Quality showed that the contractor had continued his construction activities even though he had been warned he was in violation of the Mississippi Air and Water Pollution Control Law. Gray v. Miss. Comm'n on Envtl. Quality, 174 So. 3d 956, 2015 Miss. App. LEXIS 478 (Miss. Ct. App. 2015).

WATER POLLUTION CONTROL REVOLVING FUND

Sec.

49-17-85. Funds established; promulgation of regulations; uses of fund; administrative fees; renegotiation of certain loans.

49-17-87. Pledge of moneys for repayment of loan; loan agreement and repayment schedule; audits; applicability of limitations on indebtedness.

§ 49-17-85. Funds established; promulgation of regulations; uses of fund; administrative fees; renegotiation of certain loans.

(1) There is established in the State Treasury a fund to be known as the "Water Pollution Control Revolving Fund," which shall be administered by the commission acting through the department. The revolving fund may receive

bond proceeds and funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source, public or private. The revolving fund shall be maintained in perpetuity for the purposes established in this section.

(2) There is established in the State Treasury a fund to be known as the "Water Pollution Control Hardship Grants Fund," which shall be administered by the commission acting through the department. The grants fund shall be maintained in perpetuity for the purposes established in this section. Any interest earned on monies in the grants fund shall be credited to that fund.

(3) The commission shall promulgate regulations for the administration of the revolving fund program, the hardship grants program and for related programs authorized under this section. The regulations shall be in accordance with the federal Water Quality Act of 1987, as amended, and regulations and guidance issued under that act. The commission may enter into capitalization grant agreements with the United States Environmental Protection Agency and may accept capitalization grant awards made under Title VI of the Water Quality Act of 1987, as amended.

(4) The commission shall establish a loan program which shall commence after October 1, 1988, to assist political subdivisions in the construction of water pollution control projects. Loans from the revolving fund may be made to political subdivisions as set forth in a loan agreement in amounts not exceeding one hundred percent (100%) of eligible project costs as established by the commission. Notwithstanding loan amount limitations set forth in Section 49-17-61, the commission may require local participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the revolving fund. The commission may establish a maximum amount for any loan in order to provide for broad and equitable participation in the program.

(5) The commission shall establish a hardship grants program for rural communities, which shall commence after July 1, 1997, to assist severely economically disadvantaged small rural political subdivisions in the construction of water pollution control projects. The commission may receive and administer state or federal funds, or both, appropriated for the operation of this grants program and may take all actions necessary to implement the program in accordance with the federal hardship grants program. The hardship grants program shall operate in conjunction with the revolving loan program administered under this section.

(6) The commission shall act for the state in all matters and with respect to all determinations under Title VI of the federal Water Quality Act of 1987, as amended, and the federal Omnibus Appropriations and Recision Act of 1996.

(7) Except as otherwise provided in this section, the revolving fund may be used only:

(a) To make loans on the condition that:

(i) The loans are made at or below market interest rates, at terms not to exceed the maximum time allowed by federal law after project completion; the interest rate and term may vary from time to time and from loan to loan at the discretion of the commission;

(ii) Periodic principal and interest payments will commence when required by the commission but not later than one (1) year after project completion and all loans will be fully amortized when required by the commission but not later than the maximum time allowed by federal law after project completion;

(iii) The recipient of a loan will establish a dedicated source of revenue for repayment of loans;

(b) To buy or refinance the debt obligation of political subdivisions at or below market rates, where the debt obligations were incurred after March 7, 1985, and where the projects were constructed in compliance with applicable federal and state regulations;

(c) To guarantee, or purchase insurance for, obligations of political subdivisions where the action would improve credit market access or reduce interest rates;

(d) To provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(e) To earn interest on fund accounts;

(f) To establish nonpoint source pollution control management programs;

(g) To establish estuary conservation and management programs;

(h) For the reasonable costs of administering the revolving fund and conducting activities under this act, subject to the limitations established in Section 603(d)(7) of Title VI of the federal Clean Water Act, as amended, and subject to annual appropriation by the Legislature;

(i) In connection with the issuance, sale and purchase of bonds under Section 31-25-1 et seq., related to the funding of projects, to provide security or a pledge of revenues for the repayment of the bonds; and

(j) To pay the principal and interest on bonds issued pursuant to Section 11 of Chapter 580, Laws of 2007, Section 1 of Chapter 492, Laws of 2008, Section 47 of Chapter 557, Laws of 2009, Section 45 of Chapter 533, Laws of 2010, Section 3 of Chapter 480, Laws of 2011, Section 36 of Chapter 569, Laws of 2013, Section 9 of Chapter 452, Laws of 2018, Section 1 of Chapter 415, Laws of 2019, Section 16 of Chapter 492, Laws of 2020, and Section 137 of Chapter 480, Laws of 2021, as they become due; however, only interest and investment earnings on money in the fund may be utilized for this purpose.

(8) The hardship grants program shall be used only to provide hardship grants consistent with the federal hardship grants program for rural communities, regulations and guidance issued by the United States Environmental Protection Agency, subsections (3) and (5) of this section and regulations promulgated and guidance issued by the commission under this section.

(9) The commission shall establish by regulation a system of priorities and a priority list of projects eligible for funding with loans from the revolving fund.

(10) The commission may provide a loan from the revolving fund only with respect to a project if that project is on the priority list established by the commission.

(11) The revolving fund shall be credited with all payments of principal and interest derived from the fund uses described in subsection (7) of this section. However, notwithstanding any other provision of law to the contrary, all or any portion of payments of principal and interest derived from the fund uses described in subsection (7) of this section may be designated or pledged for repayment of a loan as provided in Section 31-25-28 in connection with a loan from the Mississippi Development Bank.

(12) The commission may establish and collect fees to defray the reasonable costs of administering the revolving fund if it determines that the administrative costs will exceed the limitations established in Section 603(d)(7) of Title VI of the federal Clean Water Act, as amended. The administration fees may be included in loan amounts to political subdivisions for the purpose of facilitating payment to the commission. The fees may not exceed five percent (5%) of the loan amount.

(13) Except as otherwise provided in this section, the commission may, on a case-by-case basis and to the extent allowed by federal law, renegotiate the payment of principal and interest on loans made under this section to the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to political subdivisions located in such counties; however, the interest on the loans shall not be forgiven for a period of more than twenty-four (24) months and the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

(14) The commission may, on a case-by-case basis and to the extent allowed by federal law, renegotiate the payment of principal and interest on loans made under this section to Hancock County as a result of coverage under the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to political subdivisions located in Hancock County.

HISTORY: Laws, 1988, ch. 534, § 3; Laws, 1991, ch. 535, § 1; Laws, 1991, ch. 578, § 6; Laws, 1997, ch. 416, § 1; Laws, 2002, ch. 490, § 17; Laws, 2004, ch. 570, § 3; Laws, 2006, ch. 545, § 4; Laws, 2007, ch. 580, § 12; Laws, 2008, ch. 492, § 2; Laws, 2009, ch. 557, § 48; Laws, 2010, ch. 533, § 46; Laws, 2011, ch. 480, § 4; Laws, 2013, ch. 569, § 37; Laws, 2014, ch. 530, § 42, eff from and after July 1, 2014; Laws, 2018, ch. 452, § 10, eff from and after July 1, 2018; Laws, 2019, ch. 415, § 2, eff from and after July 1, 2019; Laws, 2020, ch. 492, § 17, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2021, ch. 480, § 138, eff from and after passage (approved April 22, 2021).

Editor's Notes — Laws, 2014, ch. 530, § 47, provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Laws of 2022, ch. 510, § 7, effective July 1, 2022, provides:

"SECTION 7. Upon the effective date of this act, the State Fiscal Officer shall transfer the sum of Four Million Four Hundred Ninety Thousand Dollars ($4,490,000.00) from the Capital Expense Fund created in Section 27-103-303, Mississippi Code of 1972, to the Water Pollution Control Revolving Fund created in Section 49-17-85, Mississippi

Code of 1972, to provide funds necessary to match projected federal funds available through the following federal fiscal year from the annual Clean Water State Revolving Fund (CWSRF) appropriations and from the supplemental Infrastructure Investment and Jobs Act (IIJA) appropriations. Not more than Two Million Eight Hundred Seventy Thousand Dollars ($2,870,000.00) of such funds may be used to match the annual CWSRF appropriations and not more than One Million Six Hundred Twenty Thousand Dollars ($1,620,000.00) of such funds may be issued to match the supplemental IIJA appropriations."

Amendment Notes — The 2013 amendment substituted "this act" for "Sections 49-17-81 through 49-17-89" preceding "subject to the limitations established" in (7)(h); inserted "and Section 36 of Chapter 569, Laws of 2013" and made related changes in (7)(j).

The 2014 amendment added "Except as otherwise provided in this section" at the beginning of (13) and added (14).

The 2018 amendment inserted "and Section 9 of Chapter 452, Laws of 2018" and made related changes in (7)(j).

The 2019 amendment, in (7)(j), inserted "Section 1 of Chapter 415, Laws of 2019" and made a related change; and deleted "for" preceding "in Section 31-25-28" in (11).

The 2020 amendment, effective July 9, 2020, in (7)(j), inserted "and Section 16 of Chapter 492, Laws of 2020" and made a related change.

The 2021 amendment, effective April 22, 2021, in (7)(j), inserted "Section 137 of Chapter 480, Laws of 2021" and made a related change.

§ 49-17-87. Pledge of moneys for repayment of loan; loan agreement and repayment schedule; audits; applicability of limitations on indebtedness.

(1) A political subdivision which receives a loan from the revolving fund or emergency fund is required to and authorized to pledge for the repayment of such loan (a) any part of the sales tax reimbursement to which it may be entitled under Section 27-65-75, and (b) any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, to meet a repayment schedule set forth in a loan agreement. The loan agreement shall provide for (i) monthly payments, (ii) semiannual payments or (iii) other periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). The loan agreement shall provide for the repayment of all funds received from the revolving fund within the maximum time allowed by federal law after project completion and repayment of all funds received from the emergency fund within not more than ten (10) years from the date of project completion. The Department of Revenue shall pay to the revolving fund or emergency fund monthly, or as often as is practicable, from the amount, which would otherwise be remitted to a political subdivision from its sales tax reimbursement or homestead exemption annual tax loss reimbursement, the amounts set forth in such loan agreement.

(2) Before any political subdivision shall receive any loan from the revolving fund or the emergency fund, it shall have executed with the Department of Revenue and the commission a loan agreement evidencing that loan. The loan agreement hereinabove provided for shall not be construed to prohibit any recipient from prepaying any part or all of the funds received.

(3) As determined by the commission, any political subdivision desiring to construct a project approved by the department and which receives a loan from the state for that purpose may be required to pledge as security for the repayment of that loan, all or any part of the revenues of any project constructed, improved, repaired, replaced, purchased or refinanced with the proceeds of such loan. Whenever any project is a part of a system or combined system, then all or any portion of the revenues of that system or combined system may be pledged to secure repayment of a loan as determined by the commission.

The loan agreement shall provide for periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). The repayment schedule shall provide for the repayment of all funds received from the revolving fund within the maximum time allowed by federal law after project completion and repayment of all funds received from the emergency fund within not more than ten (10) years from the date of project completion. Payments under the loan agreement shall be made prior to the payments of principal or interest on any bonds issued by the political subdivision in connection with the project or projects to which loans from the revolving fund or emergency fund are made.

The State Auditor, upon the request of the commission, shall audit the receipts and expenditures of each district whose monthly payments are to be received by the department, and if the State Auditor should find the political subdivision in arrears, the Auditor shall immediately begin withholding from funds due the taxing district in which the political subdivision is located, under Section 27-33-41, an amount equal to the payment due plus accrued interest, late charges and expenses incurred in the audit and issue a warrant for that amount to the revolving fund or emergency fund as directed below.

The loan agreement hereinabove provided for shall not be construed to prohibit any recipient from prepaying any part or all of the funds received.

(4) Loans or any bonds or other evidences of indebtedness which are incurred or issued either pursuant to this chapter or Section 31-25-1 et seq., in relation to this chapter, or pursuant to any other law as evidence of any loan made or indebtedness incurred pursuant to this chapter, shall not be deemed indebtedness within the meaning specified in Section 21-33-303, with regard to cities or incorporated towns, in Section 19-9-5, with regard to counties, and in any other state law establishing a similar indebtedness limitation with regard to political subdivisions other than cities, incorporated towns and counties.

HISTORY: Laws, 1988, ch. 534, § 4; Laws, 1991, ch. 578, § 7; Laws, 1994, ch. 418, § 5; Laws, 1996, ch. 455, § 4; Laws, 2015, ch. 313, § 1, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "the maximum time allowed by federal law after project completion" for "not more than twenty (20) years" in the second sentence of (1) and for "no more than twenty (20) years" in the second sentence of the first undesignated paragraph following (3); and substituted "Department of Revenue" for "State Department of Taxation" in the last sentence of (1) and in the first sentence of (2).

MISSISSIPPI UNDERGROUND STORAGE TANK ACT OF 1988

Sec.

49-17-403. Definitions.
49-17-405. Groundwater protection fund; supplemental funding; duties of executive director; liability of tank owners; limitation on provisions of chapter and section.
49-17-407. Environmental protection fee on motor fuels; deposit of fees; limits on use of fund; third-party claims.
49-17-421. Annual tank regulatory fee; computation of fee.
49-17-422. Underground Storage Tank (UST) Advisory Council; creation; composition.

§ 49-17-403. Definitions.

For the purposes of Sections 49-17-401 through 49-17-433, the following shall have the meaning ascribed in this section:

(a) "Active site" means a site of an underground storage tank where an owner can be identified and where the tank is available for use in the management and handling of motor fuels, including tanks currently in service, tanks temporarily closed and tanks temporarily out of service.

(b) "Bonded distributor" means any person holding a distributor's permit issued under either Section 27-55-7 or Section 27-55-507.

(c) "Commission" means the Mississippi Commission on Environmental Quality.

(d) "Contamination" means the presence or discharge of regulated substances in or on the land or in the waters of the state.

(e) "Department" means the Mississippi Department of Environmental Quality.

(f) "Director" means the Executive Director of the Mississippi Department of Environmental Quality.

(g) "Groundwater" means water located beneath the land surface located wholly or partially within the boundaries of the state.

(h) "Motor fuels" means gasoline and aviation gasoline as defined in Section 27-55-5 and special fuel as defined in Section 27-55-505, except for those "motor fuels" used in electric power generating plants for the commercial production of electricity.

(i) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank.

(j) "Owner of an underground storage tank" means:

(i) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

(ii) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

(k) "Person" means an individual, trust, firm, joint-stock company, federal agency, corporation, state municipality, commission, political subdivision of a state, any interstate body, a consortium, a joint venture, a commercial entity or the United States government.

(*l*) "Regulated substance" means:

(i) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law No. 96-510, as amended and extended (but not including any substance regulated as a hazardous waste under Section 17-17-1 et seq., Mississippi Code of 1972); and

(ii) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14-7/10) pounds per square inch absolute).

(m) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.

(n) "Response action" means any activity, including evaluation, planning, design, engineering, construction and ancillary services, which is carried out in response to any discharge, release or threatened release of motor fuels.

(o) "Response action contractor" means a person who has been approved by the commission and is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.

(p) "Retailer" means any person other than a bonded distributor who sells motor fuel as defined in this section.

(q) "Substantial compliance" means that an owner or operator of an underground storage tank has registered that tank with the department, and has made a good-faith effort to comply with the law; and the rules and regulations adopted pursuant thereto.

(r) "Third-party claim" means any civil action brought or asserted by any person against any owner of any underground storage tank for damages to person or property which damages are the direct result of a release of motor fuels from an underground storage tank.

(s) "Underground storage tank" means any one (1) or combination of containers including tanks, vessels, enclosures or structures together with appurtenances thereto used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. Such term does not include any:

(i) Farm or residential tanks of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tanks used for storing heating oil for consumptive use on the premises where stored;

(iii) Septic tanks;

(iv) Pipeline facilities (including gathering lines regulated under:

1. The Natural Gas Pipeline Safety Act of 1968, Public Law No. 90-481, 49 USCS 1671-1684, as amended and extended,

2. The Hazardous Liquid Pipeline Safety Act of 1979, Public Law No. 96-129, 49 USCS 2001 et seq., as amended and extended, or

3. An intrastate pipeline facility regulated under state laws comparable to the provisions of law in Clause 1 or 2 of this subparagraph);

(v) Surface impoundments, pits, ponds or lagoons;

(vi) Storm water or wastewater collection systems;

(vii) Flow-through process tanks;

(viii) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operation;

(ix) Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft or tunnel if the storage tank is situated upon or above the surface of the floor;

(x) Other tanks exempted by the Administrator of the federal Environmental Protection Agency; and

(xi) Piping connected to any of the above exemptions.

(t) "User" means any person who purchases or acquires motor fuels as defined in this section for consumption.

HISTORY: Laws, 1988, ch. 547, § 2; Laws, 1989, ch. 346, § 1; Laws, 1993, ch. 470, § 3; Laws, 1999, ch. 461, § 43, eff from and after July 1, 1999; Laws, 2018, ch. 397, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment deleted "words and phrases" preceding "shall have the meaning" in the introductory paragraph; and rewrote (a), which read: "'Active site' means a site of an underground storage tank where an owner can be identified and where the tank is in use for management and handling of motor fuels."

§ 49-17-405. Groundwater protection fund; supplemental funding; duties of executive director; liability of tank owners; limitation on provisions of chapter and section.

(1) There is hereby created the Mississippi Groundwater Protection Trust Fund, hereinafter referred to as the "fund" to be administered by the Executive Director of the Department of Environmental Quality. The commission shall adopt regulations for administering this fund.

(2) The commission shall expend or utilize monies up to One Million Dollars ($1,000,000.00) annually in the fund by an annual appropriation approved by the Legislature to supplement all reasonable direct and indirect costs associated with the development and administration of the Underground Storage Tank (UST) Program if the annual tank regulatory fee in Section 49-17-421 does not adequately cover the costs associated with Sections 49-17-401 through 49-17-435. All reasonable direct and indirect costs associated with development and administration of the UST Program, including, but

not limited to, the reasonable costs of the following activities as they relate to the UST Program:

(a) Preparing generally applicable regulations or guidance regarding the UST Program or its implementation or enforcement;

(b) Administering the UST Program, including the supporting and tracking of UST owners/operators and associated UST systems, compliance with UST regulations, the fund, UST-certified contractors, tank fees and related data entry;

(c) Implementing and enforcing the terms of the UST regulations; and

(d) Investigation, assessment and rehabilitation of contamination sites with restoration or replacement of potable water supplies.

At no time shall an annual fund appropriation result in more than supplemental funding for the current annual cost of administering the UST Program.

(3) Whenever in the executive director's determination a release of motor fuels at an active site may pose a threat to the environment or the public health, safety or welfare, the department shall obligate monies available in the fund to provide for:

(a) Investigation and assessment of contamination sites;

(b) Restoration or replacement of potable water supplies;

(c) Rehabilitation of contamination sites, which may consist of cleanup of affected soil, groundwater and inland surface waters, using cost-effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with the site selection and clean-up criteria established by the commission, except that nothing herein shall be construed to authorize the commission to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing underground storage tanks.

(4) Whenever the commission has expended funds from the fund created by Sections 49-17-401 through 49-17-433, the owner of the underground storage tank shall not be liable to the department for such costs if the owner was in substantial compliance on the date on which the discharge of the motor fuels which necessitates the cleanup was reported to the department. Otherwise owners are responsible for reimbursement and the reimbursed monies shall go back into the fund. In such circumstances the commission is authorized to take any necessary action to recover these monies from responsible owners.

(5) Any provisions of this section and chapter regarding liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted thereto.

HISTORY: Laws, 1988, ch. 547, § 3; Laws, 1995, ch. 627, § 7, eff from and after July 1, 1995; Laws, 2022, ch. 460, § 1, eff from and after passage (approved April 18, 2022).

Amendment Notes — The 2022 amendment, effective April 18, 2022, designated

the former last sentence of the introductory paragraph of (1) as the introductory paragraph of (3), and redesignated former (1)(a) through (c) as (3)(a) through (c); in (1), substituted "Department of Environmental Quality" for "Department of Natural Resources"; added (2); redesignated former (2) and (3) as (4) and (5); and made a minor stylistic change.

§ 49-17-407. Environmental protection fee on motor fuels; deposit of fees; limits on use of fund; third-party claims.

(1)(a) An environmental protection fee of Four-tenths of One Cent (4/10 of 1¢) per gallon is hereby levied upon any bonded distributor, as defined by Sections 49-17-401 through 49-17-433, who sells or delivers motor fuels to a retailer or user in this state.

(b) Every person, other than a bonded distributor, who shall purchase or acquire motor fuels within this state on which the environmental protection fee has not accrued, shall be liable for the environmental protection fee.

(c) The environmental protection fee shall be imposed only one (1) time on motor fuels sold in the state.

(d) The environmental protection fee shall be collected by the Department of Revenue and shall be designated separately from the excise taxes on fuels.

(e) Any person liable for the environmental protection fee shall be subject to the same requirements and penalties as distributors under the provisions of the Mississippi Special Fuel Tax Law.

(f) Any person liable for the environmental protection fee shall file a report and remit any fees due at the same time provided for filing reports under Section 27-55-523, on forms prescribed by the Department of Revenue.

(g) The Department of Revenue is hereby authorized and empowered to promulgate all rules and regulations necessary for the administration of the environmental protection fee.

(2)(a) On or before the fifteenth day of each month the environmental protection fees collected during the previous month shall be deposited into the Mississippi Groundwater Protection Trust Fund established in Section 49-17-405. When the unobligated balance in the fund reaches or exceeds Ten Million Dollars ($10,000,000.00), the administrator of the fund shall notify in writing the Department of Revenue no later than the twenty-fifth day of the month to revise the distribution of the environmental protection fee and the Department of Revenue shall deposit the fee into the State Highway Fund. Such distribution shall become effective on the last day of the month succeeding the month in which such notice was given. All environmental protection fees accrued shall be reported and paid.

(b) When the fund balance is reduced below Six Million Dollars ($6,000,000.00), the fee shall again be deposited into the Mississippi Groundwater Protection Trust Fund until such time as the fund shall reach or exceed Ten Million Dollars ($10,000,000.00). The administrator of the

fund shall notify, no later than the twenty-fifth day of the month, the Department of Revenue to deposit the environmental protection fee into the Mississippi Groundwater Protection Trust Fund and such distribution shall become effective on the first day of the second month succeeding the month in which the notice to deposit the fee into the fund was given.

(3) This fund shall be used for the purposes set forth in Sections 49-17-401 through 49-17-435 and for no other governmental purposes, nor shall any portion hereof ever be available to borrow from by any branch of government; it being the intent of the Legislature that this fund and its increments shall remain intact and inviolate. Any interest earned on monies in this fund shall remain in this fund.

(4) Monies held in the fund established under Sections 49-17-401 through 49-17-435 shall be used for supplemental funding of the Underground Storage Tank (UST) Program as described in Section 49-17-405 and only at an active site and shall be disbursed in accordance with the commission requirements and as follows:

(a) Payments shall be made to any third party who brings a third-party claim against any owner of an underground storage tank and the commission as trustee of the Mississippi Groundwater Protection Trust Fund and who obtains a final judgment in such action which is valid and enforceable in this state against such parties. Payment shall be paid to the third party upon filing by such party an application with the department attaching the original or a certified copy of the final judgment.

(b) Payments shall be made in reasonable amounts to approved response action contractors and other parties involved in the site study and cleanup. Payment shall be made to the party incurring the costs by filing of a sworn application with the department indicating the fair and reasonable value of the costs of site rehabilitation, subject to the regulations and limitations as set by the department.

(5) Payments from the fund are limited as follows:

(a) For cleanup purposes, a maximum of One Million Five Hundred Thousand Dollars ($1,500,000.00) may be disbursed from the fund for any one (1) site, per confirmed release occurrence.

(b) For third-party judgments, a maximum of One Million Dollars ($1,000,000.00) may be disbursed from the fund for any one (1) site, per confirmed release occurrence.

(c) Nothing in Sections 49-17-401 through 49-17-435 shall establish or create any liability or responsibility on the part of the department or the State of Mississippi to pay any cleanup costs or third-party claims if the fund created herein is insufficient to do so.

(6) Monies held in the fund established under Sections 49-17-401 through 49-17-435 shall not be used for purchases of equipment needed to assist in cleanup operations.

(7) Nothing in Sections 49-17-401 through 49-17-435 shall serve to limit any recovery against an owner of an underground storage tank in excess of the fund payment limits established under this section.

(8) Substantial compliance shall in no way be construed to be an absolute defense to civil liability.

HISTORY: Laws, 1988, ch. 547, § 4; Laws, 1990, ch. 512, § 1; Laws, 1992, ch. 397, § 1; Laws, 1993, ch. 470, § 1; Laws, 1995, ch. 404, § 1; Laws, 1999, ch. 385, § 1; Laws, 1999, ch. 461, § 44; Laws, 2009, ch. 429, § 1, eff from and after July 1, 2009; Laws, 2018, 1st Ex Sess, ch. 1, § 10, eff from and after passage (approved August 29, 2018); Laws, 2022, ch. 460, § 2, eff from and after passage (approved April 18, 2022).

Editor's Notes — Laws of 2018, 1st Extraordinary Session, ch. 1, §§ 14 and 15, effective from and after August 29, 2018, provide:

"SECTION 14. This act shall be known and may be cited as the Mississippi Infrastructure Modernization Act of 2018.

"SECTION 15. Sections 5 and 6 of this act shall take effect and be in force from and after October 1, 2018, the remainder of this act shall take effect and be in force from and after its passage."

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective August 29, 2018, substituted "Department of Revenue" for "State Tax Commission" throughout the section; substituted "to revise the distribution of the environmental protection fee and the Department of Revenue shall deposit the fee into the State Highway Fund. Such distribution" for "to abate the environmental protection fee. The abatement" in (2)(a); in (2)(b), substituted "deposited into the Mississippi Groundwater Protection Trust Fund" for "imposed at the rate of Four-tenths of One Cent (4/10 of 1¢) per gallon" in the first sentence, and combined the former last two sentences, which read: "The administrator of the fund shall notify, no later than the twenty-fifth day of the month, the State Tax Commission to reimpose the environmental protection fee. The imposition of the fee shall become effective on the first day of the second month succeeding the month in which the notice to reimpose the fee was given," into the present last sentence.

The 2022 amendment, effective April 18, 2022, in (4), inserted "for supplemental funding...as described in Section 49-17-405 and."

§ 49-17-421. Annual tank regulatory fee; computation of fee.

(1) After receiving the annual report and recommendation of the Underground Storage Tank (UST) Advisory Council, the commission may assess and collect an annual tank regulatory fee in an amount sufficient to administer Sections 49-17-401 through 49-17-435, but not to exceed Two Hundred Dollars ($200.00) per tank. The fee, as set by the commission, shall be assessed per tank per year and shall be collected from the owner of each underground storage tank available for use in Mississippi on July 1, 1988, or brought into use or available for use after that date, as provided in the Mississippi Underground Storage Tank Act of 1988 (Sections 49-17-401 through 49-17-435). The fee assessed under this section is a debt due by the owner of each tank in use in Mississippi on July 1, 1988, or brought into use after that date.

(2) The commission shall establish the amount of the tank regulatory fee to cover the costs of the Underground Storage Tank Program. The fee for each state fiscal year shall be set by order of the commission, which shall include:

(a) A receipt of the report and recommendations of the UST Advisory Council, and

(b) A public notice to allow the public a period of at least thirty (30) days to provide comments regarding the underground storage tank fee report and recommendation, or to request a public hearing in accordance with Section 49-17-29(4)(a).

The department may conduct a public hearing on the tank regulatory fee when a significant level of public interest exists or when warranted by other factors. Notwithstanding the provisions of this subsection (2), the commission may proceed with entry of the order if the UST Advisory Council fails to submit its report in a timely manner.

The tank regulatory fee shall be due July 1 of each year, and if any part of the fee is not paid within thirty (30) days after the due date, a penalty of fifty percent (50%) of the amount due shall accrue at once and be added to the fee, unless the owner of the underground storage tank demonstrates to the commission that the failure to make timely payment was unavoidable due to financial hardship or otherwise beyond the control of the owner.

Monies collected under this section shall be deposited in a special fund which is created in the State Treasury. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the General Fund and any interest earned on amounts in the special fund shall be credited to the special fund by the Treasurer. The fund may receive monies from any available public or private source, including, but not limited to, the fund, collection of fees, interest, grants, taxes, public or private donations and judicial actions. Monies in this special fund shall be expended by annual appropriation approved by the Legislature to administer Sections 49-17-401 through 49-17-435.

HISTORY: Laws, 1988, ch. 547, § 11; Laws, 1993, ch. 470, § 2; Laws, 1996, ch. 334, § 1, eff from and after July 1, 1996; Laws, 2018, ch. 397, § 2, eff from and after July 1, 2018; Laws, 2022, ch. 460, § 3, eff from and after passage (approved April 18, 2022).

Amendment Notes — The 2018 amendment added (2), and divided the former section into (1) and the last two paragraphs of (2); in (1), rewrote the former first two sentences, which read: "The commission may assess and collect a tank regulatory fee in an amount sufficient to administer Sections 49-17-401 through 49-17-435 but not to exceed One Hundred Dollars ($100.00) per tank per year from the owner of each underground storage tank in use in Mississippi on July 1, 1988, or brought into use after that date, as provided in the Mississippi Underground Storage Tank Act of 1988 (Sections 49-17-401 through 49-17-435). The tank regulatory fee assessed under this section is a debt due by the owner of each underground storage tank in use in Mississippi on July 1, 1988, or brought into use after that date"; and in the third paragraph of (2), combined the former first two sentences into the first sentence, and therein deleted "tank regulatory" preceding "fee is not paid."

The 2022 amendment, effective April 18, 2022, in the last paragraph, inserted "the fund" in the next-to-last sentence.

§ 49-17-422. Underground Storage Tank (UST) Advisory Council; creation; composition.

(1) An Underground Storage Tank (UST) Advisory Council is created to consult with the commission on all matters relating to the UST program, to

conduct an independent study of the development and administration costs of the program and to conduct an annual review of administering such program. The costs to be included in the study for the program shall be those costs as provided in Section 49-17-421. The council shall include in the study the type and quantity of underground storage tanks in the state that are covered by the program. After completing a study of the needs and costs of the program, the council shall recommend an equitable fee system for the program that is based on the type and quantity of underground storage tanks. The annual review for the program shall determine if the fee system is collecting sufficient funds to meet program needs and include any recommendation by the council regarding changes to the fee system. Each annual review report shall be due January 1 of each year to the commission and the executive director of the department.

(2) The UST Advisory Council shall be comprised of the following five (5) members:

(a) The President of the Mississippi Petroleum Marketers and Convenience Store Association (MPMCSA) or his or her designee;

(b) A member of the MPMCSA appointed by the Board of Directors of the MPMCSA for a term of four (4) years;

(c) A representative appointed by the President of the Mississippi Engineering Society, experienced in the assessment and remediation of petroleum contamination, for a term of four (4) years;

(d) A representative appointed by the Governor, of any company doing business in Mississippi in the installation, closure and/or testing of underground storage tanks; and

(e) A representative appointed by the Lieutenant Governor, of any company doing business in Mississippi in the installation, closure and/or testing of underground storage tanks.

The council members who are appointed by the Governor and Lieutenant Governor shall have terms that are concurrent with the term of the appointing official.

(3) Original appointments to the UST Advisory Council must be made no later than January 1, 2019, and vacancies on the council shall be filled by appointment in the same manner as the original appointments. The council shall convene within sixty (60) days following the date of the appointment of the members, and must select from their membership a chairperson to preside over meetings and a vice chairperson to preside in the absence of the chairperson or when the chairperson is excused. The council shall adopt procedures governing the manner of conducting its business. A majority of the members constitutes a quorum to do business.

(4) Members of the UST Advisory Council shall serve without salary, but shall be entitled to receive a reimbursement of their actual travel and expenses, as provided in Section 25-3-41, that are incurred while performing in the scope of their duties as council members. These expenses are to be paid on an itemized statement that is approved by the State Fiscal Officer from fees collected under Section 49-17-421.

(5) The executive director of the department shall provide technical,

clerical and other support services, including service by contract, as the council requires in the performance of its functions.

HISTORY: Laws, 2018, ch. 397, § 3, eff from and after July 1, 2018.

LEAD-BASED PAINT ACTIVITY ACCREDITATION AND CERTIFICATION ACT

Sec.
49-17-509. Authority of commission; applicability of Sections 49-17-501 through 49-17-531.

§ 49-17-509. Authority of commission; applicability of Sections 49-17-501 through 49-17-531.

(1) The commission shall adopt regulations for accreditation of lead-based paint activity training programs. Accredited training programs shall ensure the availability of, and provide adequate facilities for, the delivery of lectures, course tests, hands-on training and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed. The training program shall offer courses which teach work practice standards for conducting lead-based paint activities as adopted by the United States Environmental Protection Agency or the commission under Sections 49-17-501 through 49-17-531. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for. The commission also may adopt accreditation requirements for training programs providing refresher training programs.

(2) The commission shall adopt regulations establishing work practice standards for performing lead-based paint activities in target housing and child-occupied facilities. These standards may include appropriate documented methodologies, clearance levels and requirements for lead hazard screens, risk assessments, abatement activities, renovation activities, sample collection and analysis and record keeping. Beginning on August 31, 1998, all lead-based paint activities shall be performed in accordance with work practice standards adopted under Sections 49-17-501 through 49-17-531. The commission shall implement a compliance monitoring program to ensure compliance with the work practice standards.

(3) The commission shall adopt regulations for certification of lead-based paint risk assessors, project designers, renovators, dust sampling technicians, supervisors, inspectors and workers.

(4) Applicants for the issuance or reissuance of certificates required under Sections 49-17-511 through 49-17-519 shall submit to the commission, on forms prepared by the commission, an application. In addition, the applicant shall submit documentation deemed appropriate by the commission providing the educational background and demonstrating satisfactory completion of the applicable training programs and shall pay the applicable fee.

(5) The commission shall require certificates issued under Sections 49-17-511 through 49-17-521 to be reissued annually.

(6) Except as otherwise required by Sections 49-17-501 through 49-17-531, regulations adopted under Sections 49-17-501 through 49-17-531 shall be no more stringent than federal regulations for lead-based paint activities.

(7) Sections 49-17-501 through 49-17-531 do not apply to a person who is performing lead-based paint activities or abatement of lead-based paint hazards or renovation in a residential dwelling owned by that person, unless the residential dwelling is occupied by a person or persons other than the owner or owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

HISTORY: Laws, 1997, ch. 390, § 5; Laws, 2000, ch. 500, § 1; Laws, 2009, ch. 427, § 4; Laws, 2013, ch. 338, § 1, eff from and after passage (approved Mar. 14, 2013).

Amendment Notes — The 2013 amendment deleted former (8) which read: "Sections 49-17-501 through 49-17-531 do not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six (6) resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in Sections 49-17-501 through 49-17-531."

MISSISSIPPI GULF REGION UTILITY ACT

Sec.

49-17-707. Creation of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2023].

49-17-709. Board of Directors of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2023].

49-17-711. Employees; budget [Repealed effective July 1, 2023].

49-17-713. Duties and responsibilities of the utility board [Repealed effective July 1, 2023].

49-17-737. Board of Directors for Hancock County Utility Authority.

§ 49-17-707. Creation of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2023].

(1) There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "Mississippi Gulf Coast Region Utility Board" to serve the citizens of the Gulf Coast Region. The utility board is created as a forum for the Gulf Coast Region to collaborate and cooperate regarding water, wastewater and storm water issues; to assist in the efficient management of water, wastewater and storm water resources; to develop recommendations pertaining to water, wastewater and storm water systems; and to provide assistance, funding and guidance to the county authorities to assist in the identification of

the best means to meet all present and future water, wastewater and storm water needs in the Gulf Coast Region.

(2) This section shall repeal July 1, 2023.

HISTORY: Laws, 2006, ch. 546, § 4; Laws, 2009, ch. 494, § 1; Laws, 2011, ch. 446, § 1; Laws, 2016, ch. 368, § 1, eff from and after July 1, 2016; reenacted and amended, Laws, 2019, ch. 401, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment extended the date of the repealer for the section by substituting "July 1, 2019" for "July 1, 2016" in (2).

The 2019 amendment reenacted and amended the section to extend the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in (2).

§ 49-17-709. Board of Directors of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2023].

(1)(a) All powers of the Mississippi Gulf Coast Region Utility Board shall be exercised by a board of directors to be composed of the following: (i) the president of each county authority; and (ii) three (3) at-large directors, to be appointed by the Governor, who shall be residents of the Gulf Coast Region.

(b) The initial terms of the at-large directors shall be for two (2), four (4) and six (6) years as designated by the Governor. After the expiration of the initial terms, the subsequent terms shall be for a period of six (6) years. However, there shall be no more than one (1) at-large director appointed from any one (1) county. Each president may appoint a delegate, to represent him at a meeting of the board.

(2) At the initial meeting of the board, the board shall elect a president and a vice president. Thereafter, the board will annually, at the last meeting of the fiscal year, elect a president and a vice president who shall serve in their respective offices for the next fiscal year. The directors shall serve without a salary but are entitled to receive per diem pay as provided for in Section 25-3-69, and for actual and necessary expenses incurred while in the performance of his duties as a member of the board as provided in Section 25-3-41.

(3) Any utility board member who does not attend three (3) consecutive regular meetings of the authority shall be subject to removal by a majority vote of the board and shall be replaced with an appointment from the Governor or governing body making the initial appointment.

(4) The president shall be the chief executive officer of the utility board and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall act in the absence or disability of the president. Each director shall be required to give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00), with sureties qualified to do business in this state, and the premiums on the bond shall be an expense of the utility board. Each bond shall be payable to the State of Mississippi. The condition of each bond shall be that each director will faithfully perform all duties of his office and account for all monies or other assets which shall come into his custody as a director of the utility board.

(5) A quorum for any meeting of the board of directors shall be the majority of the total membership of the board of directors. All business of the utility board shall be transacted by vote of the board of directors.

(6) The utility board shall conduct regular meetings as set forth in its bylaws. The utility board shall establish rules and regulations regarding its meetings and may amend such bylaws, rules and regulations as may be necessary to conduct the business of the board.

(7) This section shall repeal July 1, 2023.

HISTORY: Laws, 2006, ch. 546, § 5; Laws, 2009, ch. 494, § 2; Laws, 2011, ch. 446, § 2; Laws, 2016, ch. 368, § 2, eff from and after July 1, 2016; reenacted and amended, Laws, 2019, ch. 401, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment extended the date of the repealer for the section by substituting "July 1, 2019" for "July 1, 2016" in (7).

The 2019 amendment reenacted and amended the section by substituting "monies" for "money" in the last sentence of (4), and extending the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in (7).

§ 49-17-711. Employees; budget [Repealed effective July 1, 2023].

(1) The utility board may hire an executive director and secretary-treasurer having the duties as determined by the utility board. The executive director must have a college degree. If hired, the executive director and secretary-treasurer each shall be required to give bond in a sum not less than Fifty Thousand Dollars ($50,000.00), conditioned on the executive director and secretary-treasurer faithfully performing all duties of his office and account for all monies and other assets which come into his custody as executive director or secretary-treasurer of the utility board.

(2)(a) The utility board shall prepare a budget consistent with its bylaws estimating its expenses and revenue needs for each forthcoming fiscal year at least ninety (90) days prior to the beginning of each fiscal year. The utility board shall submit its budget to each county authority prior to final approval by the utility board.

(b) Any funds, gifts or grants allocated for the administrative costs related to the restoration or construction of water, wastewater and storm water services and projects in the Gulf Coast Region under this act shall, to the extent allowable, be paid into the Public Trust Tidelands Fund for the repayment of any tideland funds expended for the operational costs of the utility board.

(3) The utility board shall have the authority to receive and spend funds from any source.

(4) This section shall repeal July 1, 2023.

HISTORY: Laws, 2006, ch. 546, § 6; Laws, 2009, ch. 494, § 3; Laws, 2011, ch. 446, § 3; Laws, 2016, ch. 368, § 3, eff from and after July 1, 2016; reenacted and amended, Laws, 2019, ch. 401 § 3, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment extended the date of the repealer for the section by substituting "July 1, 2019" for "July 1, 2016" in (4).

The 2019 amendment reenacted and amended the section by substituting "monies" for "money" in the last sentence of (1), and extending the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in (4).

§ 49-17-713. Duties and responsibilities of the utility board [Repealed effective July 1, 2023].

(1) The utility board shall have the right and powers necessary to carry out the purposes of this act, including, but not limited to:

(a) Make recommendations to the county authorities pertaining to water, wastewater and storm water issues in the Gulf Coast Region;

(b) Make recommendations necessary to achieve compatibility and uniformity of systems and technology related to water, wastewater and storm water in the Gulf Coast Region;

(c) Help resolve cross-jurisdictional and multicounty disputes pertaining to water, wastewater and storm water issues between county authorities when requested by the county authorities;

(d) Recommend short-term and long-term priorities for water, wastewater and storm water related projects;

(e) Recommend emergency preparedness procedures in the Gulf Coast Region related to water, wastewater and storm water;

(f) Recommend training standards related to operations of water, wastewater and storm water systems;

(g) Sue and be sued in its own name and to enjoy all the protections, immunities and benefits provided by the Mississippi Tort Claims Act, as it may be amended from time to time;

(h) Adopt an official seal and alter the same at pleasure;

(i) Maintain office space at such place or places within the boundaries of the board as it may determine;

(j) Own or lease real or personal property;

(k) Invest money of the utility board, including proceeds from the sale of any bonds subject to any agreements with bond holders on such terms and in such manner as the utility board deems proper;

(l) Apply for, accept and utilize grants, gifts and other funds from any source for any purpose necessary in support of the purpose of this act and to coordinate the distribution of funds to the county authorities;

(m) Employ and terminate staff, including, but not limited to, attorneys, engineers and consultants as may be necessary;

(n) Enter into contracts for all operation and maintenance needs of the utility board;

(o) Enter into contracts to conduct studies of regional issues regarding water, wastewater and storm water services and to provide assistance, funds and guidance in the construction, operation and maintenance of regional water, wastewater and storm water services;

(p) Enter into contracts with any person or any public agency in furtherance of any of the purposes authorized by this act upon such

consideration as the board of directors and such person may agree. Any such contract may extend over any period of time, including a term which extends beyond the term of the then majority of the existing board members, notwithstanding any provision or rule of law to the contrary; may be upon such terms and for such consideration, nominal or otherwise, as the parties thereto shall agree; and may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of such bonds, and all other obligations specified therein are paid or terminated. Any such contract shall be binding upon the parties thereto according to its terms. The utility board may also assume or continue any contractual or other business relationships entered into by the members of the utility board, including the rights to receive and acquire property transferred under option to purchase agreements;

(q) Contract with the authorities under any terms mutually agreed by the parties to carry out any powers, duties or responsibilities granted by this act or any other laws to the authorities;

(r) Acquire insurance for the utility board's systems, facilities, buildings, treatment plants and all property, real or personal, to insure against all risks as any insurance may, from time to time, be available;

(s) Make, enforce, amend and repeal rules and regulations for the management of the utility board's business and affairs;

(t) Enter onto public or private lands, waters or premises for the purposes of making surveys, borings or soundings, or conducting tests, examinations or inspections for the purposes of the utility board, subject to responsibility for any damage done to property entered;

(u) Apply, contract for, accept, receive and administer gifts, grants, appropriations and donations of money, materials, and property of any kind, including loans and grants from the United States, the state, a unit of local government, or any agency, department, district or instrumentality of any of the foregoing, upon any terms and conditions as the United States, the state, a unit of local government, or any agency, department, district or instrumentality shall impose;

(v) Create, maintain and regulate reservoirs and promulgate and enforce rules and regulations for the creation and maintenance of reservoirs; and

(w) Make other recommendations to carry out the purposes of this act.

(2) This section shall repeal July 1, 2023.

HISTORY: Laws, 2006, ch. 546, § 7; Laws, 2009, ch. 494, § 4; Laws, 2011, ch. 446, § 4; Laws, 2016, ch. 368, § 4, eff from and after July 1, 2016; reenacted and amended, Laws, 2019, ch. 401, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment extended the date of the repealer for the section by substituting "July 1, 2019" for "July 1, 2016" in (2).

The 2019 amendment reenacted and amended the section to extend the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in (2).

§ 49-17-737. Board of Directors for Hancock County Utility Authority.

(1) After consolidation, all powers of the Hancock County Utility Authority shall be exercised by a board consisting of the following:

(a) One (1) director who is the Mayor of Bay St. Louis, or his or her designee, for an initial term of two (2) years;

(b) One (1) director who is the Mayor of Waveland, or his or her designee, for an initial term of three (3) years;

(c) One (1) director who is the President of the Board of Supervisors of Hancock County, or his or her designee, for an initial term of four (4) years;

(d) One (1) director who is the Chairman of the Kiln Utility and Fire District;

(e) One (1) director who is the Chairman of the Hancock County Water and Sewer District; and

(f) One (1) director who is the Chairman of the Pearlington Water and Sewer District.

After expiration of the initial terms, the directors in paragraphs (a), (b) and (c) shall serve a term of four (4) years.

(2) In addition to any other powers and rights conferred upon such board of directors, the board is granted and may exercise all powers and rights granted pursuant to Sections 49-17-739 through 49-17-773 to promote the health, welfare and prosperity of the general public.

(3) Any designee serving as a director shall serve at the will and pleasure of the governing authority that designated the director.

(4) Any person who is designated by a mayor to be a director on the board of the Hancock County Utility Authority shall have the same voting powers on the board as the mayor who designated such person.

HISTORY: Laws, 2006, ch. 546, § 19; Laws, 2010, ch. 493, § 1; Laws, 2011, ch. 902, § 3; Laws, 2015, ch. 303, § 2, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment deleted former (1)(d), which read "One (1) director who is the Chairman of the Diamondhead Water and Sewer District," and redesignated the remaining subdivisions accordingly; and added (4).

CHAPTER 19.

FORESTS AND FOREST PROTECTION

In General. 49-19-1
Forest Harvesting. 49-19-51
Forestry Education, Timber Management and Forest Fire Control. 49-19-111
Forestry Inventory and Strategic Planning Law. 49-19-401

IN GENERAL

Sec.

49-19-1. State forestry commission; membership; compensation; organization.

Sec.
49-19-3. Selection and qualifications of state forester; other duties and powers of the commission [Paragraph (j) repealed effective June 30, 2022].

§ 49-19-1. State forestry commission; membership; compensation; organization.

(1) There shall be a State Forestry Commission composed of ten (10) members, who shall be qualified electors of the state. The Dean of the School of Forest Resources at Mississippi State University shall be an ex officio member of the commission, with full voting authority. The Governor shall appoint eight (8) members, with the advice and consent of the Senate, for a term of six (6) years. The Governor shall appoint one (1) member from each congressional district as constituted at the time the appointments are made and shall appoint the remainder of the members from the state at large. A member from a congressional district must be a certified tree farmer who owns eighty (80) or more acres of forest land or a person who derives a major portion of his or her personal income from forest-related business, industry or other related activities. Members of the commission from the state at large may or may not possess the same qualifications as members appointed from the congressional districts.

(2) The members of the commission shall receive no annual salary but each member of the commission shall receive a per diem plus expenses and mileage as authorized by law for each day devoted to the discharge of official duties. No member of the commission shall receive total per diem in excess of twenty-four (24) days' compensation per annum.

(3) If a vacancy occurs in the office of an appointed member of the commission, the vacancy shall be filled by appointment for the balance of the unexpired term.

(4) The commission shall elect from its membership a chair, who shall preside over meetings, and a vice chair, who shall preside in the absence of the chair or when the chair is excused.

(5) The commission shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. Each member of the commission shall take the oath prescribed by Section 268 of the Mississippi Constitution of 1890 and shall enter into a bond in the amount of Thirty Thousand Dollars ($30,000.00) to be approved by the Secretary of State, conditioned according to law and payable to the State of Mississippi before assuming the duties of office.

(6) Any appointment made to the commission contrary to this section shall be void, and it is unlawful for the State Fiscal Officer to pay any per diem or authorize the expenses of the appointee.

HISTORY: Codes, 1930, § 6164; 1942, § 6022; Laws, 1926, ch. 161; Laws, 1964, ch. 241, §§ 1, 2; Laws, 1966, ch. 276, § 1; Laws, 1973, ch. 359, § 1; Laws, 1980, ch. 560, § 24; Laws, 1981, ch. 305, § 1; Laws, 1997, ch. 597, § 1; Laws, 2006, ch. 571, § 3, eff from and after July 1, 2006; Laws, 2018, ch. 395, § 7, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment deleted the third sentence in (1), which read "The chairman of the advisory committee to the Mississippi Institute for Forest Inventory shall be an ex officio nonvoting member of the commission" and made stylistic and gender neutral changes.

§ 49-19-3. Selection and qualifications of state forester; other duties and powers of the commission [Paragraph (j) repealed effective June 30, 2022].

The duties and powers of the commission shall be:

(a) To appoint a State Forester, who shall serve at the will and pleasure of the commission and who is qualified to perform the duties as set forth herein; and to pay him such salary as is provided by the Legislature, and allow him such office expenses incidental to the performance of his official duties as the commission, in its discretion, may deem necessary; and to charge him with the immediate direction and control, subject to the supervision and approval of the commission, of all matters relating to forestry as authorized herein. Any person appointed by the commission as State Forester shall have received a bachelor's degree in forestry from an accredited school or college of forestry and shall be licensed and registered under the provisions of the Mississippi Foresters Registration Law (Section 73-36-1 et seq.) and in addition shall have had at least five (5) years' administrative experience in a forestry-related field.

(b) To take such action and provide and maintain such organized means as may seem necessary and expedient to prevent, control and extinguish forest fires, including the enforcement of any and all laws pertaining to the protection of forests and woodland.

(c) To encourage forest and tree planting for the production of a wood crop, for the protection of water supply, for windbreak and shade, or for any other beneficial purposes contributing to the general welfare, public hygiene and comfort of the people.

(d) To cause to be made such technical investigations and studies concerning forest conditions, the propagation, care and protection of forest and shade trees, the care and management of forests, their growth, yield and the products and by-products thereof, and any other competent subject, including forest taxation, bearing on the timber supply and needs of the state, which the commission, in its discretion, may deem proper.

(e) To assist and cooperate with any federal or state department or institution, county, town, corporation or individual, under such terms as in the judgment of the commission will best serve the public interest, in the preparation and execution of plans for the protection, management, replacement, or extension of the forest, woodland and roadside or other ornamental tree growth in the state.

(f) To encourage public interest in forestry by means of correspondence, the public press, periodicals, the publication of bulletins and leaflets for general distribution, the delivery of lectures in the schools and other suitable means, and to cooperate to the fullest extent with the extension department

services of the state colleges in promoting reforestation. It shall be the duty of the State Forester to cooperate with private timber owners in laying plans for the protection, management and replacement of forests and in aiding them to form protection associations. It shall be his duty to examine all timbered lands belonging to the state and its institutions and report to the commission upon their timber conditions and actual value, and also whether some of these lands may not be held as state forests. He shall be responsible for the protection and management of lands donated, purchased or belonging to the state or state institutions, and all other lands reserved by the state as state forests.

(g) To control the expenditure of any and all funds appropriated or otherwise made available for the several purposes set forth herein under suitable regulations and restrictions by the commission and to specifically authorize any officer or employee of the commission to incur necessary and stipulated expenses in connection with the work in which such person may be engaged.

(h) To submit annually to the Legislature a report of the expenditures, proceedings and results achieved, together with such other matters including recommendations concerning legislation as are germane to the aims and purposes of this chapter.

(i) To create, establish and organize the State of Mississippi into forestry districts for the most effective and efficient administration of the commission.

(j) To appoint, upon the State Forester's recommendation, six (6) individuals who shall be designated Mississippi Forestry Commission Law Enforcement Officers with authority to bear arms, investigate and make arrests; however, the law enforcement duties and authority of the officers shall be limited to woods arson. The officers shall comply with applicable minimum educational and training standards for law enforcement officers. These officers may issue citations for any violation of those laws for recklessly or with gross negligence causing fire to burn the lands of another. A citation issued by a Forestry Commission law enforcement officer shall be issued on a uniform citation form consisting of an original and at least two (2) copies. Such citation shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard and the date and time the person charged with a violation is to appear to answer the charge. The uniform citation form shall make a provision on it for information that will constitute a complaint charging the offense for which the citation was issued and, when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed under that complaint. For the purposes of this paragraph, the fact that any person is found to have a brush or debris pile or other material which is or was being burned and reasonable and prudent efforts were not taken to prevent the spread of the fire onto the lands of another shall be evidence that such person recklessly or with gross negligence caused the land to burn.

This paragraph shall stand repealed on June 30, 2022.

HISTORY: Codes, 1930, § 6165; 1942, § 6023; Laws, 1926, ch. 161; Laws, 1950, ch. 224; Laws, 1954, ch. 186; Laws, 1958, chs. 192, 341; Laws, 1966, ch. 445, § 15; Laws, 1970, ch. 296, § 1; Laws, 1981, ch. 305, § 2; Laws, 1996, ch. 329, § 1; Laws, 2000, ch. 546, § 1; Laws, 2003, ch. 523, § 1; Laws, 2005, ch. 495, § 1; Laws, 2006, ch. 332, § 1; Laws, 2006, ch. 571, § 2; Laws, 2008, ch. 317, § 1; Laws, 2011, ch. 353, § 1; Laws, 2014, ch. 446, § 1, eff from and after passage (approved Mar. 27, 2014); Laws, 2018, ch. 371, § 1, eff from and after July 1, 2018; Laws, 2018, ch. 395, § 8, eff from and after July 1, 2018.

Joint Legislative Committee Note — Section 1 of Chapter 371, Laws of 2018, effective from and after July 1, 2018 (approved March 16, 2018), amended this section. Section 8 of Chapter 395, Laws of 2018, effective from and after July 1, 2018 (approved March 191, 2018), also amended this section. As set out above, this section reflects the language of all amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 14, 2018, meeting of the Committee.

Amendment Notes — The 2014 amendment extended the repealer provision for (j) from "June 30, 2014" to "June 30, 2018."

The first 2018 amendment (ch. 371) extended the date of the repealer for paragraph (j) by substituting "June 30, 2022" for "June 30, 2018" in the last paragraph of paragraph (j).

The second 2018 amendment (ch. 395) deleted (k), which read: "To discharge such duties, responsibilities and powers necessary to accomplish and implement the Forestry Inventory and Strategic Planning Act under Section 49-19-401 et seq."

FOREST HARVESTING

Sec.
49-19-51 through 49-19-77. Repealed.

§§ 49-19-51 through 49-19-77. Repealed.

Repealed by Laws of 2017, ch. 310, § 1, effective upon passage and approved March 9, 2017.

§ 49-19-51. [Codes, 1942, § 6046-11; Laws, 1944, ch. 240, § 2.]

§ 49-19-53. [Codes, 1942, § 6046-10; Laws, 1944, ch. 240, § 1.]

§ 49-19-55. [Codes, 1942, § 6046-12; Laws, 1944, ch. 240, § 3.]

§ 49-19-57. [Codes, 1942, § 6046-13; Laws, 1944, ch. 240, § 4.]

§ 49-19-59. [Codes, 1942, § 6046-14; Laws, 1944, ch. 240, § 5.]

§ 49-19-61. [Codes, 1942, § 6046-15; Laws, 1944, ch. 240, § 6.]

§ 49-19-63. [Codes, 1942, § 6046-16; Laws, 1944, ch. 240, § 7.]

§ 49-19-65. [Codes, 1942, § 6046-22; Laws, 1944, ch. 240, § 13.]

§ 49-19-67. [Codes, 1942, § 6046-17; Laws, 1944, ch. 240, § 8.]

§ 49-19-69. [Codes, 1942, § 6046-21; Laws, 1944, ch. 240, § 12.]

§ 49-19-71. [Codes, 1942, § 6046-18; Laws, 1944, ch. 240, § 9.]

§ 49-19-73. [Codes, 1942, § 6046-19; Laws, 1944, ch. 240, § 10; Laws, 1974, ch. 569 § 21, eff from and after passage (approved April 24, 1974).]

§ 49-19-75. [Codes, 1942, § 6046-20; Laws, 1944, ch. 240, § 11.]
§ 49-19-77. [Codes, 1930, § 6168; 1942, § 6026; Laws, 1926, ch. 161.]

Editor's Notes — Laws of 2017, ch. 310, § 1, effective from and after March 9, 2017, provides:

"SECTION 1. The Forest Harvesting Act, Sections 49-19-51, 49-19-53, 49-19-55, 49-19-57, 49-19-59, 49-19-61, 49-19-63, 49-19 65, 49-19-67, 49-19-69, 49-19-71, 49-19-73, 49-19-75 and 49-19-77, Mississippi Code of 1972, which require leaving pine and hardwood seed trees when harvesting timber for commercial purposes, is hereby repealed."

Former § 49-19-51 provided that §§ 49-19-51 through 49-19-75 be cited as the "Forest Harvesting Law" and required state agencies make interpretations and applications that most nearly complied with the intent and purposes set forth in former § 49-19-53.

Former § 49-19-53 provided the legislative intent and purposes of the Forest Harvesting Law (§§ 49-19-51 through 49-19-75).

Former § 49-19-55 related to cutting tress for naval stores and required that a certain number of trees be left standing.

Former § 49-19-57 related to cutting pine trees for commercial purposes.

Former § 49-19-59 related to cutting hardwood trees for commercial purposes.

Former § 49-19-61 related to cutting timber on forest lands containing both pine and hardwood timber.

Former § 49-19-63 related to trees left standing for seed trees.

Former § 49-19-65 required the state forestry commission to publicize the Forest Harvesting Act (§§ 49-19-51 through 49-19-75).

Former § 49-19-67 related to the applicability of §§ 49-19-51 through 49-19-75.

Former § 49-19-69 provided that §§ 49-19-51 through 49-19-75 were not applicable to timber cutting contracts entered into prior to the effective date of §§ 49-19-51 through 49-19-75.

Former § 49-19-71 related to the enforcement of §§ 49-19-51 through 49-19-75 by the forestry commission.

Former § 49-19-73 required law enforcement officers cooperate with the state forestry commission to enforce the provisions of §§ 49-19-51 through 49-19-75.

Former § 49-19-75 provided penalties for violations of §§ 49-19-51 through 49-19-75.

Former § 49-19-77 encouraged owners of forested lands that were going to be cut, denuded or bled for turpentine to leave seed trees standing.

FORESTRY EDUCATION, TIMBER MANAGEMENT AND FOREST FIRE CONTROL

Sec.
49-19-115. Forest acreage tax.

§ 49-19-115. Forest acreage tax.

(1) The boards of supervisors of all counties are hereby directed to levy a special tax to be known as "the forest acreage tax." Such tax shall be Two Cents (2¢) per acre on all timbered and uncultivatable lands in the county in order to receive the financial and supervisory cooperation of the State Forestry Commission in carrying out organized forest fire control and other provisions of Sections 49-19-111 through 49-19-117.

(2) In addition to the tax levied under subsection (1) of this section, the boards of supervisors of all counties are hereby directed to levy an additional

forest acreage tax on all timbered and uncultivatable lands in the county beginning October 1, 1989, and continuing for three (3) succeeding years in the following amounts:

	Increase	Total Acreage Tax
Fiscal year ending September 30, 1990.....	3¢ per acre	5¢ per acre
Fiscal year ending September 30, 1991.....	2¢ per acre	7¢ per acre
Fiscal year ending September 30, 1992.....	2¢ per acre	9¢ per acre

Upon completion of the third year, the total acreage tax shall remain at the Nine Cents (9¢) per acre per year.

(3) Uncultivatable lands shall not include bogs, unreclaimed strip mine areas, coastal beach sands, tidal and freshwater marshes, beaver ponds and flood or flowage easements.

(4) Those homeowners described in Section 27-33-67(2), who qualify for the exemptions allowed in Article 1, Chapter 33, Title 27, Mississippi Code of 1972, shall be exempt from any forest acreage tax levied pursuant to this section.

(5) The provisions of this section and the tax levy required herein shall not be applicable to any counties which were not levying such forest acreage tax on January 1, 1989.

HISTORY: Codes, 1942, § 6046-04; Laws, 1932, ch. 310; Laws, 1944, ch. 238, § 4; Laws, 1950, ch. 210; Laws, 1944, ch. 238, § 4; Laws, 1954, ch. 179; Laws, 1960, ch. 204; Laws, 1980, ch. 459; Laws, 1984, ch. 453, § 21; Laws, 1989, ch. 514, § 4; Laws, 1996, ch. 490, § 1; Laws, 2002, ch. 387, § 1; Laws, 2003, ch. 523, § 2; Laws, 2006, ch. 599, § 1; Laws, 2008, ch. 334, § 1; Laws, 2012, ch. 417, § 1; Laws, 2016, ch. 319, § 1, eff from and after July 1, 2016; Laws, 2020, ch. 392, § 1, eff from and after passage (approved June 29, 2020).

Amendment Notes — The 2016 amendment extended the date of the repealer in (6) by substituting "July 1, 2020" for "July 1, 2016."

The 2020 amendment, effective June 29, 2020, substituted "boards of supervisors" for "board of supervisors" in (1) and (2); and deleted (6), which read: "This section shall be repealed on June 30, 2020."

FORESTRY INVENTORY AND STRATEGIC PLANNING LAW

Sec.
49-19-401 through 49-19-405. Repealed.
49-19-407. Coordinated Outreach and Education Programs.
49-19-408. Repealed.

§§ 49-19-401 through 49-19-405. Repealed.

Repealed by Laws, 2018, ch. 395, § 6, eff from and after July 1, 2018.

§ 49-19-401. [Laws, 2002, ch. 571, § 1, eff from and after July 1, 2002.]

§ 49-19-403. [Laws, 2002, ch. 571, § 2; Laws, 2005, ch. 445, § 1; Laws, 2006, ch. 571, § 1, eff from and after July 1, 2006.]

§ 49-19-405. [Laws, 2002, ch. 571, § 3, eff from and after July 1, 2002.]

Editor's Notes — Former § 49-19-401 provided the short title of Chapter 571, Laws of 2002.

Former § 49-19-403 created the Mississippi Institute for Forest Inventory and provided for the appointment of the institute directory, creation of an advisory board, and institute membership.

Former § 49-19-405 prescribed the duties and responsibilities of the Mississippi Institute for Forest Inventory.

§ 49-19-407. Coordinated Outreach and Education Programs.

The Executive Directors of the Mississippi Forestry Commission, the Mississippi Development Authority, the MSU Forest and Wildlife Research Center, and the Cooperative Extension Service shall establish a procedure and guidelines for the coordination of outreach and education programs. It shall be the duty of each agency to cooperate and to promote a coordinated outreach and education program to increase the utilization of private nonindustrial forest landowner forest resources and increase profitability for such resources.

HISTORY: Laws, 2002, ch. 571 , § 4, eff from and after July 1, 2002; Laws, 2018, ch. 395, § 9, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment deleted "Mississippi Institute for Forest Inventory" following "Executive Directors of the."

§ 49-19-408. Repealed.

Repealed by Laws, 2018, ch. 395, § 6, eff from and after July 1, 2018.

§ 49-19-408. [Laws, 2005, ch. 444, § 1, eff from and after passage (approved Mar. 23, 2005).]

Editor's Notes — Former § 49-19-408 provided limited immunity from criminal trespass for persons conducting forest inventory on private lands.

CHAPTER 23.

OUTDOOR ADVERTISING

Sec.
49-23-9. Standards for signs erected or maintained in business areas.

§ 49-23-9. Standards for signs erected or maintained in business areas.

(1) In addition to the authority set out in this chapter, the commission shall have authority to promulgate rules and regulations regarding the configuration and location of outdoor advertising signs provided for in Section 49-23-5. At a minimum, the rules and regulations shall conform to the national

standards promulgated pursuant to Title 23 of the United States Code and the standards set out in an agreement entered into under Section 49-23-27.

(2)(a) For signs erected prior to July 1, 2003, the maximum size of any outdoor sign or other advertising device shall be one thousand two hundred (1,200) square feet;

(b) For sign structures erected on or after July 1, 2003, the maximum area for any one (1) sign face shall be six hundred seventy-two (672) square feet, the maximum height shall be fourteen (14) feet and the maximum length shall be forty-eight (48) feet, inclusive of any border and trim on the sign face, but excluding any embellishment on, and cut-out extension of, the sign face, the base or apron, supports and other structural members. The height of sign structures erected on or after April 15, 2008, or any replacements thereof shall not exceed forty (40) feet above the level of the road grade unless the grade of the land adjacent to the road is higher than the level of the road grade, then the height of the sign structure may exceed forty (40) feet above the level of the road grade but shall not exceed forty (40) feet above the grade of the site where the sign is placed. Any embellishment on or cut-out extension of any sign face shall not exceed twenty percent (20%) of the square footage of such sign face.

(3) The area of any sign face shall be measured by the smallest square, rectangle, triangle or circle or combination thereof which will encompass the entire sign.

(4) Sign structures erected on or after July 1, 2003, may contain one (1) or two (2) signs per face and may use only a side-by-side, back-to-back or V-type configuration and no other; provided, however, that if two (2) signs are used facing the same direction, the aggregate total area shall not exceed six hundred seventy-two (672) square feet.

(5) All illuminated outdoor signs or other advertising devices shall be so illuminated as to adhere to the customary practices of the industry in Mississippi and in conformance with national standards. No lighting devices shall be used which in any way imitate any traffic control device, railroad sign or signal, or highway directional signs.

(6) All outdoor signs and other advertising devices located within one-half (½) mile of an intersection of two (2) or more primary highways, or a primary highway and the Great River Road, or an interchange on the interstate system shall be erected and/or maintained with a minimum spacing between structures of five hundred (500) feet, unless separated by another commercial building or structure, other than outdoor advertising, in which case outdoor advertising may be permitted on one or more sides of building or buildings. The minimum spacing requirement of five hundred (500) feet between structures shall not apply to signs in existence on April 15, 2008.

(7) No two (2) signs shall be spaced less than five hundred (500) feet apart, except as to signs in existence on April 15, 2008, which shall not be removed by Sections 49-23-1 through 49-23-29. This spacing limitation shall apply to areas within incorporated cities, towns, villages and in zoned and unzoned industrial or commercial areas.

HISTORY: Codes, 1942, § 8059.5-05; Laws, 1966, ch. 497, § 5; Laws, 1972, ch. 303, § 2; Laws, 1978, ch. 534, § 4; Laws, 2002, ch. 518, § 1; Laws, 2008, ch. 517, § 4, eff from and after passage (approved May 8, 2008); Laws, 2022, ch. 458, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (2)(b), deleted the former second sentence, which read: "The height of any sign structure shall not exceed forty (40) feet," and inserted "or any replacements thereof" in the former third sentence.

CHAPTER 27.

COASTAL WETLANDS PROTECTION ACT

Sec.

49-27-5. Definitions.

49-27-29. Conditions or limitations may be imposed on grant or modification of permit.

49-27-37. Copy of order in issuance, denial, revocation or suspension of permit to be sent to parties; time; extensions.

49-27-71. Definitions; jurisdiction; penalties; standing; landowner permission revocable; notice; determination of ownership; derelict vessel removal; emergency removal; cost recovery; court process; department authorities.

§ 49-27-5. Definitions.

(a) "Coastal wetlands" means all publicly-owned lands subject to the ebb and flow of the tide; which are below the ordinary high water mark; all publicly-owned accretions above the ordinary high water mark and all publicly-owned submerged water-bottoms below the ordinary high water mark and includes the flora and fauna on the wetlands and in the wetlands.

(b) "Department" means the Department of Marine Resources.

(c) "Regulated activity" means any of the following activities:

(i) The dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland;

(ii) The dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands;

(iii) Killing or materially damaging any flora or fauna on or in any coastal wetland;

(iv) The erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and

(v) The erection of any structure or structures on suitable sites for water dependent industry.

(d) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from coastal wetlands.

(e) "Executive director" means the Executive Director of the Department of Marine Resources.

(f) "Filling" means either the displacement of waters by the deposition into coastal wetlands of soil, sand, gravel, shells or other material; or the artificial alteration of water levels or water currents by physical structures, drainage ditches or otherwise.

(g) "Person" means any natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or any county, municipality or political subdivision, or any other corporation of any character whatsoever.

(h) "Commission" means the Mississippi Advisory Commission on Marine Resources.

(i) "Water dependent industry" means those commercial, industrial or manufacturing activities which, for purposes basic to their existence must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast. "Suitable sites for water dependent industry" means those areas of land which are suitable for the development of water dependent industry because of their proximity to waters of navigable depth, size and configuration, topography, soil conditions and access to other means of transportation. After consultation with local governments, port authorities, development commissions, port and harbor commissions and other interested parties, and after full consideration of zoning ordinances duly adopted by local governments, the department shall designate those sites it deems suitable for water dependent industry. The definition of "suitable sites for water dependent industry" shall be limited to, but not necessarily inclusive of, waterfront sites owned by county port authorities, development commissions and port and harbor commissions, and to areas that are now or are later made to be within one thousand (1,000) feet of the centerline of any natural or maintained channel having a depth of seven (7) feet or greater at mean low water. However, additional sites may be included in the definition of suitable sites for water dependent industry with the concurrence of the board of supervisors in the county affected.

(j) "Ordinary High Water Mark (OHWM)" means a mark on the shore determined by the department staff, established by fluctuations in water level and indicated by physical and biological characteristics including, but not limited to, water stains, changes in the character of the soil, scour lines, presence of debris lines, changes in plant communities and other appropriate means that consider the characteristics of the surrounding area. The determination of OHWM shall not be made by the department staff during high tide where the above referenced characteristics are not observable. OHWM is not the same as mean high water and shall not be used for determination of the boundary between private property and public trust tidelands or for any purpose other than regulated activity as defined in this section.

HISTORY: Laws, 1973, ch. 385, § 3; Laws, 1974, ch. 401, § 1; Laws, 1979, ch. 492, § 2; Laws, 1994, ch. 578, § 28; Laws, 2005, ch. 371, § 1, eff from and after July 1, 2005; Laws, 2021, ch. 460, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (a), substituted "ordinary high water mark" for "watermark of ordinary high tide" three times; in (h), inserted

"Advisory"; in (i), substituted "department" for "commission" in the third sentence; and added (j).

§ 49-27-29. Conditions or limitations may be imposed on grant or modification of permit.

In granting or modifying any permit, the commission may impose conditions or limitations on the proposed activity designed to carry out the public policy set forth in this chapter. Permits shall be valid for not more than five (5) years from the date of issuance, except that permits issued to a governmental entity shall be valid for not more than ten (10) years. The commission may issue one (1) extension not to exceed two (2) years in length if the applicant requests it in writing before the expiration date of the permit.

HISTORY: Laws, 1973, ch. 385, § 6(d); Laws, 1994, ch. 578, § 36; Laws, 2005, ch. 338, § 2; Laws, 2016, ch. 386, § 1, eff from and after July 1, 2016; Laws, 2018, ch. 373, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2016 rewrote the section, which read: "In granting or modifying any permit, the commission may impose conditions or limitations on the proposed activity designed to carry out the public policy set forth in this chapter. Upon the expiration of a coastal wetlands permit issued under this chapter, the commission may extend the permit in time."

The 2018 amendment substituted "permits issued to a governmental entity" for "permits for maintenance dredging of existing channels maintained by a local governmental entity" in the second sentence.

§ 49-27-37. Copy of order in issuance, denial, revocation or suspension of permit to be sent to parties; time; extensions.

(1) The commission shall send a copy of any order in issuance, denial, revocation or suspension of a permit to the parties stated in Section 49-27-17, and such orders must be sent within ninety (90) days from the receipt of a complete application, or within ninety (90) days from an amendment to the application as provided by Section 49-27-11(2), in the case of granting or denying or thirty (30) days from the date of the hearing in the case of suspension or revocation, unless an extension is requested as provided in subsection (2) and approved by the commission.

(2) An applicant may request, in writing, additional extensions up to ninety (90) days for the processing of an application.

HISTORY: Laws, 1973, ch. 385, § 6(h); Laws, 1994, ch. 578, § 40; Laws, 2004, ch. 314, § 1; Laws, 2006, ch. 305, § 1; Laws, 2009, ch. 354, § 3; Laws, 2011, ch. 394, § 2; Laws, 2014, ch. 328, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (2), deleted "thirty day" following "An applicant may request, in writing, additional" and inserted "up to ninety (90) days" following "extensions."

§ 49-27-71. Definitions; jurisdiction; penalties; standing; landowner permission revocable; notice; determination of ownership; derelict vessel removal; emergency removal; cost recovery; court process; department authorities.

(1) **Definitions.** As used in the section, the following words and phrases have the following meanings unless the context clearly indicates otherwise:

(a) "Abandoned vessel" means a vessel left unattended for four (4) or more weeks after a hurricane, tropical storm or other natural event resulting in a declaration of emergency by the Governor, or, in the absence of a hurricane, tropical storm or other natural event resulting in a declaration of emergency by the Governor, any of the following:

(i) A vessel left unattended that is moored, anchored, or otherwise in the waters of the state or on public property for a period of more than ten (10) days.

(ii) A vessel that is moored, anchored, or otherwise on or attached to private property for a period of more than ten (10) days without the consent of the owner or lessee of the property or of the public trust tidelands.

Upon notification from the owner of the vessel outlining the circumstances following a hurricane, tropical storm or other natural event, the department may grant an exception to the time frames indicated above.

(b) "Department" means the Mississippi Department of Marine Resources.

(c) "Derelict vessel" means a vessel in the waters of the State of Mississippi that satisfies any of the following:

(i) Is aground without the ability to extricate itself absent mechanical assistance;

(ii) Is sunk or otherwise resting on the bottom of the waterway;

(iii) Is abandoned;

(iv) Is wrecked, junked, or in a substantially dismantled condition upon any waters of this state:

1. A vessel is "wrecked" if it is sunken or sinking; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or fire.

2. A vessel is "junked" if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion.

3. A vessel is "substantially dismantled" if at least two (2) of the three (3) following vessel systems or components are missing, compromised, incomplete, inoperable, or broken:

(A) The steering system;

(B) The propulsion system; or

(C) The exterior hull integrity.

Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion;

(v) Docked, grounded, or beached upon the property of another without the consent of the owner of the property;

(vi) Is obstructing a waterway or within one hundred (100) yards of the boundaries of any state, county or municipal port;

(vii) Is endangering life or property;

(viii) Has broken loose or is in danger of breaking loose from its anchor, mooring, or ties; or

(iv) A vessel that is otherwise not seaworthy.

(d) "Documented vessel" means a vessel documented under 46 USC, Chapter 121.

(e) "Effective means of propulsion" means a vessel, other than a barge, that is equipped with:

(i) A functioning motor, controls, and steering system; or

(ii) Rigging and sails that are present and in good working order, and a functioning steering system.

A vessel does not have an effective means of propulsion for safe navigation within seventy-two (72) hours after the vessel owner or operator received telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from a representative of the department, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The department may adopt regulations to implement this paragraph.

(f) "Floating building or structure" means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure.

(g) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property to such conduct.

(h) "Moored" means a vessel that is anchored or affixed in some other way to the public trust tidelands, to leased tidelands, to private land, or within the riparian zone of a private or public landowner or leaseholder.

(i) "Registered" means a vessel documented under Section 59-21-5.

(j) "Unseaworthy" means a vessel that is not fit or safe for any normal perils of the sea or has no effective means of propulsion.

(k) "Vessel" means every description of watercraft, other than a seaplane, capable of being used as a means of transportation on the water. For the purposes of this section, vessels powered only by hand, foot, oars or paddles, are included.

For the purposes of this section, floatable buildings and structures, whether or not they are used for navigation, are included.

(*l*) "Waters of the state" means any waters located within Harrison, Hancock and Jackson Counties under the jurisdiction of the Mississippi Department of Marine Resources as established pursuant to Section 49-15-23.

(m) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2) **Jurisdiction.** (a)(i) In the waters of Harrison, Hancock and Jackson Counties, a person, firm, corporation or other entity may not leave derelict or at risk of being derelict, any vessel on the coastal wetlands, marine waters, or on public or privately owned lands without the owner's permission.

(ii) The Department of Marine Resources has the authority to remove derelict vessels, whether located on private or public property.

(iii) Vessels located in ports and harbors are subject to the provisions outlined in Title 50, Mississippi Code of 1972, Ports, Harbors, Landings and Watercraft.

(iv) Subparagraph (i) of this paragraph (a) does not apply to vessels located in marinas, garages or repair shops for repairs, improvements or other work with knowledge of the owner and for which the costs for such services have been unpaid.

(v) Vessels deemed to be derelict pursuant to this chapter are exempt from the salvage provisions in Section 89-17-1 et seq.

(b)(i) In all other waters of the State of Mississippi, a person, firm, corporation or other entity may not leave derelict or at risk of being derelict, any vessel in the wetlands, public waters or waterways or on public or privately owned lands without the owner's permission.

(ii) Subparagraph (i) of this paragraph (b) does not apply to vessels located in public or private marinas, garages or repair shops for repairs, improvements or other work with knowledge of the owner and for which the costs for such services have been unpaid.

(iii) Vessels deemed to be derelict pursuant to this chapter are exempt from the salvage provisions of Section 89-17-1 et seq.

(3) **Penalties.** Violations of this section will be subject to the penalties as provided in Section 49-15-63.

(4) **Standing.** A party with standing may initiate the derelict vessel procedures in this section. For purpose of this section, the following parties have standing:

(a) The owner of the property where the vessel came to rest or to which the vessel was made fast;

(b) Any harbormaster, police department, municipality or agent of the state that agrees to accept or process a derelict vessel; or

(c) Any professional marine salvager when the salvager is engaged by a person with standing.

(5) **Landowner permission may be revoked at any time.** The landowner must provide the department sufficient proof that the vessel owner has been notified of the revocation of landowner's permission or proof that the landowner cannot locate the owner of the vessel.

When a vessel that is not otherwise leased to another party is moored upon public trust tidelands for a period of thirty (30) days or longer, permission must be granted by the Secretary of State's Office.

(6) **Notice.** Any party with standing, or his or her representative, may initiate the notice process by filing an application with the department to remove the derelict vessel. Upon receipt and review of the application, the department may initiate the following notice process:

(a) A department officer is authorized to board any vessel that has been reported to the department as being derelict or at risk of being derelict to determine the condition of the vessel and in an attempt to establish ownership of the vessel.

(b) A department officer shall post notice, which must comply with the following requirements:

(i) Be posted on the vessel in a prominent location, visible to an approaching person;

(ii) Require the vessel owner to submit a plan for removal to the department within seven (7) days of the notice; and

(iii) Include a space for the owner of the vessel to respond.

(c) If the registered owner responds with a signature in the space or otherwise provides a written response to the department requesting an extension of time, then the registered owner will have an additional five (5) days to submit the plan for removal.

(d) The department will notify the respondent of the approval or denial of the removal plan within seven (7) business days.

(e) If the respondent fails to comply with the approved removal plan and fails to submit a satisfactory reason as to why the vessel cannot be moved as planned, the department may present the removal plan and evidence of the owner's noncompliance to the chancery court.

(f) Upon presentation of the required evidence, the chancery court will issue an order allowing the department or its representative to remove the vessel from its current location and make whatever disposition is deemed

appropriate, including, but not limited to, immediate disposal, storage pending disposal, use for official purposes, transfer to another state agency or other disposition.

(g) If the vessel is located in an area of coastal wetlands where emergent vegetation is present or where the vessel is embedded in the ground, a wetlands permit may be required prior to removal.

(h) Any party who acts in good faith and without malicious intent in the processing, storing or moving any derelict vessel pursuant to this section is immune from liability for damages to the vessel.

(7) **Determining ownership.** (a) Upon receipt of an application for the removal of a derelict vessel where no removal plan has been submitted by the owner, the department must attempt to contact the registered owner of the vessel and any lien holders of record by other available means.

(b) The department must inquire of the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP) as to the status of the vessel in regard to the Mississippi Boating Law of 1960, Section 59-21-1 et seq., or the United States Coast Guard as to the status of the vessel in regard to documentation under 46 USC, Chapter 121.

(c) The inquiry must provide the description of the vessel, including the vessel registration number.

(d) The MDWFP is required to provide the requested information to the department within two (2) business days.

(e) The registered owner of a vessel must comply with Section 59-21-21 to change ownership. In the event a vessel owner fails to notify the MDWFP of a transfer of ownership and supply the new owner's contact information, the owner of the vessel according to MDWFP records is presumed to be the person to whom the vessel is registered.

(f) If there is no registered owner found, the department must make publication on the department's website and in a newspaper with general circulation for three (3) weeks, describing the vessel and the location.

(8) **Derelict vessel removal.** (a) After the initial notice period described in subsection (6) has lapsed and the department can show proof of inquiries to ascertain the vessel ownership under subsection (7) of this section, the department may obtain an order from the chancery court for the derelict vessel to be removed from its current location.

(b) The chancery court order may authorize the department to make whatever disposition is deemed appropriate, including, but not limited to, immediate disposal of the vessel, storage pending disposal, use for official purposes, transfer to another state agency or other disposition.

(c) If the vessel is located in an area of coastal wetlands where emergent vegetation is present or where the vessel is embedded in the ground, a wetlands permit may be required prior to removal.

(d) Any person who acts in good faith and without malicious intent in the processing, storing or moving of any derelict vessel pursuant to this section is immune from civil liability for damage to the vessel.

(9) **Emergency removal.** Any derelict vessel that is obstructing a waterway, is within any designated navigation channel or within one hundred

(100) yards of the boundaries of any state, county or municipal port may be declared a hazard to navigation and subject to immediate relocation, removal disposal, or other disposition by the department or other party with standing.

(a) Any derelict vessel that is leaking any hazardous substances, chemicals or fuels will be reported to the Mississippi Department of Environmental Quality (MDEQ) and may be declared an environmental hazard and subject to immediate relocation, removal, disposal or other disposition by MDEQ, the department or other party with standing.

(b) The registered owner of a vessel removed in accordance with this subsection (9) is liable for the costs associated with the relocation, removal, salvage storage or disposal of the vessel and any damages to the flora and fauna within the affected area.

(c) Any funds derived from salvage or sale of a vessel pursuant to this section will be used to offset the costs to the department associated with the removal, salvage, storage or disposal of the vessel.

(d) Any funds derived from damages to the flora and fauna will be deposited into the Coastal Resource Management Fund if the Department of Marine Resources initiates the action.

(e) Any party who relocates or removes a vessel under this section is not liable for damages resulting from relocation or removal unless the damage results from gross negligence or willful misconduct.

(10) **Cost recovery.** (a) The department may seek full cost recovery from the registered owner of the derelict vessel for any expense incurred as a result of, or incidental to, removing the vessel. The registered owner of the vessel is liable for the costs of removal, storage, disposal, and restoration of affected lands, attorneys' fees, and all court costs.

(b) The owner of the vessel is also liable for an administrative penalty of Five Hundred Dollars ($500.00) per day. The penalty for emergency removal of vessels under subsection (9) of this section may be imposed by the Executive Director of the Department of Marine Resources upon the recommendation of the Advisory Commission on Marine Resources, under Section 49-15-401 et seq. The fines for removal of all other vessels may be imposed by the chancery court.

(c) Expenses incurred, including, but not limited to, fines, court costs, vessel removal, storage, disposal, restoration of affected lands, and attorneys' fees for derelict vessels will be imposed by the chancery court as outlined in subsection (11) of this section.

(d) If the registered owner should fail to pay fines imposed by the department in accordance with paragraph (b) of this subsection, an enforcement action will be filed with the chancery court which may result in the court issuing an order, including, but not limited to, the collection of fines, court costs, and/or any legal avenue the court finds appropriate to collect such funds.

(e) All proceeds from any activity initiated by the Department of Marine Resources related to the disposition of a vessel under this chapter will go into the Derelict Vessel Fund, a special fund within the Seafood Fund.

However, any fines imposed for the damage to coastal wetlands will be placed in the Coastal Resource Management Fund.

(11) **Court process.** (a) The chancery court of the county in which the vessel is located has jurisdiction over all matters concerning derelict vessels under this section, including injunctions and demands for damages. If the vessel is allowed to float and/or is otherwise moved to another county after notice has been provided under subsection (6) of this section, the county in which the vessel was first provided notice shall have continuing jurisdiction.

(b) If there is no response to the publication attempts under subsection (7)(e) of this section, the chancery court will issue an order to the department allowing the department to take possession of the vessel and make such use or disposition of the vessel as deemed appropriate under the circumstances. If the department determines that the vessel may be used for official purposes or otherwise sold, the MDWFP will issue a vessel registration number or a hull identification number to the department after proof of publication has been submitted.

(c) The chancery court may, in its discretion, order damages up to Five Hundred Dollars ($500.00) per day for every day the vessel was left abandoned or derelict, beginning on the day notice was posted on the vessel.

(d) If the department or a party with standing desires to require the registered owner to remove the vessel, then he or she may apply to the chancery court for a writ of mandatory injunction ordering the registered owner to remove the vessel. The chancery court must allow a reasonable time for removal and restoration of the affected lands. The chancery court may order further damages not to exceed Five Hundred Dollars ($500.00) per day for each day that the violation exists beyond the date set by the court in an injunction for the removal of the vessel and restoration of the affected lands.

(e) Any court-ordered reimbursed costs or damages in excess of the actual costs of removal and restoration initiated by the Department of Marine Resources must be deposited in a special fund in the State Treasury known as the "Derelict Vessel Fund" within the Seafood Fund. Any funds deposited in the fund must be used to cover the administrative costs and removal costs incurred by the department for the removal of vessels. Any remaining funds must be used to cover the costs of removing additional derelict vessels. However, any fines imposed for the damage to coastal wetlands will be placed in the Coastal Resource Management Fund.

(12) **Department authorities.** (a) The department is authorized to enter into contracts with individuals, firms and corporations, or agreements with other state agencies for the removal and/or temporary storage of vessels prior to removal. The salvage value, if any, of the vessel may be used to offset the costs of the removal of the vessel and the restoration of the affected area. The department may enter into noncompetitive contracts or agreements with any state or federal entity for the removal of vessels.

(b) The department may enter into interstate or intrastate agreements toward this end, and may seek and utilize aid from all federal, state, and local sources in this endeavor.

(c) The Department of Marine Resources shall adopt rules and regulations necessary and appropriate to carry out this section for actions falling within its jurisdiction.

(d) The department may promulgate regulations to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

(i) Removal, relocation, and destruction of vessels declared a public nuisance due to the lack of proper marine sanitation, derelict or at risk of becoming derelict, or lost or abandoned.

(ii) Creation of a vessel turn-in program allowing the owner of a vessel determined by the department to be at risk of becoming derelict, to turn the vessel and vessel title over to the department to be destroyed without penalty.

(iii) Providing for removal and destruction or other disposition of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.

(iv) Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.

(v) Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

(e) The State of Mississippi, the Commission on Marine Resources, the Department of Marine Resources, and their employees and representatives shall not be liable for any damages resulting from the removal, towing, storage, sale or disposal of any vessel that is derelict or hazardous under this section.

(f) The department or any party with standing does not incur liability for any resulting damage to the vessel or any damage the vessel may cause to any property or person during the time frame between posting notice and vessel removal. If any damages occur during the period of time between notice and removal of the vessel, the registered vessel owner, according to MDWFP records, is presumed liable for all damages.

HISTORY: Laws, 2000, ch. 603, § 1; Laws, 2002, ch. 592, § 1; Laws, 2016, ch. 462, § 1, eff from and after July 1, 2016; Laws, 2022, ch. 421, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2016 amendment rewrote the section.
The 2022 amendment rewrote the section.

CHAPTER 31.

MISSISSIPPI MULTIMEDIA POLLUTION PREVENTION ACT

General Provisions. 49-31-1
Task Force on Recycling. 49-31-41

GENERAL PROVISIONS

Sec.
49-31-17. Mississippi Department of Environmental Quality and the Mississippi Development Authority to assist and promote recycling industry.

§ 49-31-17. Mississippi Department of Environmental Quality and the Mississippi Development Authority to assist and promote recycling industry.

The Mississippi Department of Environmental Quality and the Mississippi Development Authority shall assist and actively promote the recycling industry in the state. Assistance and promotion of the recycling industry shall include, but is not limited to:

(a) Identification and analysis, in cooperation with the Department of Environmental Quality, of components of the state's recycling industry and present and potential markets for recyclable materials in the state or other states;

(b) Provision of information on the availability and benefits of using recycled materials to business, industry, academic institutions and governmental entities within the state;

(c) Distribution of any material prepared in implementing this section to business, industry, academic institutions, governmental entities and the general public upon request; and

(d) Active promotion of the present markets and development of the potential markets of recyclable materials through the resources of the Mississippi Department of Environmental Quality and the Mississippi Development Authority.

HISTORY: Laws, 1990, ch. 507, § 9; Laws, 1991, ch. 494 § 4; Laws, 2006, ch. 587, § 9; Laws, 2017, ch. 404, § 7, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment deleted (2), which read: "By December 31, 2006, the Mississippi Development Authority shall assist the Task Force on Recycling in preparing a report assessing the recycling industry and recyclable materials markets in the state for the Mississippi Legislature," and deleted the "(1)" designation from the beginning of the first paragraph.

TASK FORCE ON RECYCLING

Sec.
49-31-41. Repealed.
49-31-43. Repealed.

§ 49-31-41. Repealed.

Repealed by Laws of 2017, ch. 402, § 10, effective July 1, 2017.

§ 49-31-41. [Laws, 2004, ch. 536, § 3, eff from and after July 1, 2004.]

Editor's Notes — Former 49-31-41 established the task force on recycling.

§ 49-31-43. Repealed.

Repealed by Laws of 2017, ch. 404, § 6, effective July 1, 2017.
§ 49-31-43. [Laws, 2004, ch. 536, § 4, eff from and after July 1, 2004.]

Editor's Notes — Former 49-31-43 related to Task Force on Recycling duties, election of the chairman, meetings, administration and compensation.

CHAPTER 39.

MISSISSIPPI OUTDOOR STEWARDSHIP ACT

Sec.

49-39-1. Short title.
49-39-3. Definitions.
49-39-5. Board of Trustees of the Mississippi Outdoor Stewardship Trust Fund; composition; terms.
49-39-7. Mississippi Outdoor Stewardship Trust Fund created; use of special fund monies; applications for project proposals eligible for funding; priority of projects; submission of list of approved projects to Legislature.

§ 49-39-1. Short title

This chapter shall be known and may be cited as the "Mississippi Outdoor Stewardship Act."

HISTORY: Laws, 2022, ch. 487, § 1, eff from and after July 1, 2022.

§ 49-39-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Board" means the Board of Trustees of the Mississippi Outdoor Stewardship Trust Fund.

(b) "Conservation land" means land and water, or interests therein, that are in their undeveloped, natural states or that have been developed only to the extent consistent with, or are restored to be consistent with, at least one (1) of the following environmental values or conservation benefits:

(i) Water quality protection for wetlands, rivers, streams or lakes;

(ii) Protection of wildlife habitat;

(iii) Protection of cultural sites and archeological and historic resources;

(iv) Protection of land around Mississippi's military installations to ensure that missions are compatible with surrounding communities and that encroachment on military installations does not impair future missions;

(v) Support of economic development through conservation projects;

(vi) Provision for recreation in the form of archery, boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, shooting or similar outdoor activities; or

(vii) Recruiting or retention of recreation in the form of archery, boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, shooting or similar outdoor activities.

(c) "Nongovernmental entity" means a nonprofit organization with a 501(c)(3) status that is primarily concerned with the protection and conservation of land and natural resources, as evidenced by its organizational documents.

(d) "Permanently protected conservation areas" means those resources:

(i) Owned by the federal government and dedicated for recreation or conservation or as a natural resource;

(ii) Owned by the State of Mississippi, or a county or municipality in Mississippi, and dedicated for recreation or conservation or as a natural resource;

(iii) Owned by the State of Mississippi, or a county or municipality in Mississippi, and subject to:

1. A conservation easement ensuring that the property will be maintained in a manner consistent with conservation land;

2. Contractual arrangements ensuring that, if the protected status is discontinued on a parcel, such property will be replaced by other conservation land which at the time of such replacement is of equal or greater monetary and resource protection value; or

3. A permanent restrictive covenant as provided in state law; or

(iv) Owned by any person or entity and subject to a conservation easement ensuring that the property will be maintained in a manner consistent with conservation land.

(e) "Project proposal" means any application seeking monies from the Mississippi Outdoor Stewardship Trust Fund.

(f) "Special fund" means the Mississippi Outdoor Stewardship Trust Fund created in Section 49-39-7.

(g) "State agency" means any agency, department, commission or institution of the State of Mississippi.

(h) "Working agricultural land" means land area that is either arable, under permanent crops or under permanent pastures. Arable land includes land under temporary crops such as cereals, temporary meadows for mowing or for pasture, land under market or kitchen gardens, and land temporarily fallow.

HISTORY: Laws, 2022, ch. 487, § 2, eff from and after July 1, 2022.

§ 49-39-5. Board of Trustees of the Mississippi Outdoor Stewardship Trust Fund; composition; terms.

(1) There is established the Board of Trustees of the Mississippi Outdoor Stewardship Trust Fund, which shall consist of the following members:

(a) Four (4) members appointed by the Governor, one (1) from each of the congressional districts existing on July 1, 2022;

(b) Three (3) members appointed by the Lieutenant Governor, one (1) from each of the State Supreme Court districts existing on July 1, 2022;

(c) The Executive Director of the Mississippi Soil and Water Conservation Commission, as an ex officio, nonvoting member;

(d) The Executive Director of the Mississippi Department of Marine Resources, as an ex officio, nonvoting member;

(e) The Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks, as an ex officio, nonvoting member;

(f) The Secretary of State, as an ex officio, nonvoting member;

(g) The Commissioner of Agriculture and Commerce, as an ex officio, nonvoting member;

(h) The Chairs of the Senate and House Appropriations Committees, as ex officio, nonvoting members;

(i) The Chairs of the Senate Finance Committee and House Ways and Means Committee, as ex officio, nonvoting members; and

(j) The Chairs of the Senate and House Wildlife, Fisheries and Parks Committees, as ex officio, nonvoting members.

One (1) of the members to be appointed by the Governor shall be appointed only after consideration of recommendations for those appointments made by the Speaker of the House of Representatives to the Governor. One (1) of the members to be appointed by the Lieutenant Governor shall be appointed only after consideration of recommendations for those appointments made by the Speaker of the House of Representatives to the Lieutenant Governor.

(2) The members of the board appointed by the Governor and Lieutenant Governor shall be appointed from the following private sectors: forestry, conservation, agriculture, business, marine resources, hunting or fishing. Such members shall be and shall remain Mississippi residents during their tenure on the board and shall possess a demonstrated knowledge of and commitment to public lands, land conservation and outdoor recreation. These seven (7) appointments shall be subject to the advice and consent of the Mississippi State Senate.

(3)(a) Two (2) persons initially appointed by the Governor and two (2) persons initially appointed by the Lieutenant Governor shall serve terms ending June 30, 2025. The other two (2) persons initially appointed by the Governor and the remaining person initially appointed by the Lieutenant Governor shall serve terms ending June 30, 2026.

After the expiration of the initial terms, each such appointment shall be for a term of four (4) years from the expiration of the previous term.

(b) A majority of the voting members of the board shall constitute a quorum for the conduct of meetings, and all actions of the board shall require a majority vote of the voting members of the board.

(c) The board shall annually elect one (1) voting member to serve as chairman and one (1) voting member to serve as vice chairman. The vice chairman shall act as chairman in the absence or disability of the chairman, or if there is a vacancy in the office of chairman.

(4) The members of the board appointed by the Governor and Lieutenant Governor shall receive a per diem as provided in Section 25-3-69, plus travel and necessary expenses incidental to the attendance at each board meeting, including mileage, as provided in Section 25-3-41.

(5) No board member shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated, as provided in Section 25-4-105.

(6) The board shall not approve any funding to any entity of which a voting member of the board is an executive, member or employee.

(7) The Department of Finance and Administration shall provide the office space, staff and other support necessary for the board to perform its duties.

HISTORY: Laws, 2022, ch. 487, § 3, eff from and after July 1, 2022.

§ 49-39-7. Mississippi Outdoor Stewardship Trust Fund created; use of special fund monies; applications for project proposals eligible for funding; priority of projects; submission of list of approved projects to Legislature.

(1)(a) There is created in the State Treasury a special fund to be designated the "Mississippi Outdoor Stewardship Trust Fund." The special fund shall consist of monies appropriated by the Legislature. Monies shall be accounted for in such a manner to be termed unobligated funds or obligated funds. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the special fund shall be deposited to the credit of the special fund; however, any unobligated monies in excess of Twenty Million Dollars ($20,000,000.00), excluding federal funds, remaining in the special fund at the end of a fiscal year that have not been appropriated shall lapse into the State General Fund. Monies in the special fund may be used upon selection by the board. The board and the Department of Finance and Administration may use not more than two percent (2%) of monies in the special fund to defray the board's expenses in carrying out its duties under this chapter.

(b) Subject to the provisions of this chapter, monies in the special fund may be used and expended by the board to provide funds for grants to counties, municipalities, state agencies and nongovernmental entities for:

(i) Improvement of state park outdoor recreation features and trails;

(ii) Acquisition and improvement of parks and trails by counties and municipalities, if such parks and trails lie within the jurisdiction of such counties and municipalities;

(iii) Restoration or enhancement projects to create or improve access to public waters and lands for public outdoor recreation, conservation

education, or the safe use and enjoyment of permanently protected conservation land;

(iv) Restoration or enhancement on privately owned working agricultural lands and forests that support conservation of soil, water, habitat of fish and wildlife resources;

(v) Restoration or enhancement of wetlands, native forests, native grasslands and other unique habitats important for Mississippi's fish and wildlife; and

(vi) Acquisition of critical areas for the provision or protection of clean water, wildlife, hunting, fishing, military installation buffering or natural resource-based outdoor recreation. Real property may only be acquired under this subparagraph (vi) when the property:

1. Is, at the time of acquisition, being leased by the state as a wildlife management area;

2. Adjoins or is in close proximity to state or federal wildlife management areas or state parks, or would provide better public access to such areas;

3. Is identified in a wildlife action plan developed by a state agency;

4. Constitutes riparian lands, and its acquisition is for the purpose of protecting any drinking water supply; or

5. Surrounds a military base or military installation.

Acquisition of land under this subparagraph (vi) may not be made through the exercise of any power of eminent domain or any condemnation proceeding.

(c) Unless otherwise authorized by the board, a county, municipality, state agency or nongovernmental entity receiving funds for a project under this section must expend the funds for the project within two (2) years after receipt of the funds in order to be eligible to apply for additional funds for the project under this section. If a county, municipality, state agency or nongovernmental entity receiving funds for a project does not expend the funds within two (2) years after receipt of the funds, then the county, municipality, state agency or nongovernmental entity must provide an accounting of such unused funds and the reason for failure to expend the funds. If the board determines that the project will not be completed in a timely manner, the county, municipality, state agency or nongovernmental entity must then return any unexpended funds.

(d) Monies in the special fund may not be used, expended or transferred for any other purpose other than authorized in this chapter.

(2)(a) The board shall accept applications from counties, municipalities, state agencies and nongovernmental entities for project proposals eligible for funding under this section. The board shall evaluate the proposals received in accordance with this chapter.

(b) A county, municipality, state agency or nongovernmental entity desiring assistance under this section must submit a complete application to the board. The application must include a description of the purpose for which assistance is requested, the type and amount of assistance requested and any other information required by the board.

(c) The board shall require annual independent audits of all expenditures from the special fund and present those findings to the Governor, Lieutenant Governor, Speaker of the House, Chairs of the Senate and House Appropriations Committees, Chairs of the Senate Finance and House Ways and Means Committees and Chairs of the Senate and House Wildlife, Fisheries and Parks Committees.

(d) To be eligible for funding, any nongovernmental entity applicant must submit its most recent audit, disclose any audit deficiencies in the previous five (5) years, submit its certificate of good standing from the Mississippi Secretary of State, and submit a current list of its board members for purposes of conflicts of interest.

(e) For funds to be spent on private land, the applicant must show demonstrably that the project will benefit the public.

(f) Projects that acquire property shall not be considered for approval until after July 1, 2024.

(3) The board, at its first meeting of each calendar year, shall prepare a list of priorities and criteria to guide the selection of projects. The board shall give increased priority to projects:

(a) Supporting the public recreation and conservation efforts of state agencies, counties and municipalities;

(b) Leveraging or matching other nonfederal or federal funds available for similar purposes;

(c) Supporting and promoting recreation in the form of archery, boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, shooting or similar outdoor activities;

(d) Contributing to the improvement of the quality and quantity of surface water and groundwater; or

(e) Contributing to the conservation of soil, water, and fish and wildlife resources on privately owned working agricultural lands or forests.

(4) Upon approval of the total list of projects by the board, the list of projects shall be submitted to the Lieutenant Governor, Speaker of the House, Chairs of the Senate and House Appropriations Committees, Chairs of the Senate Finance and House Ways and Means Committees and Chairs of the Senate and House Wildlife, Fisheries and Parks Committees. If federal funds or guidelines become available and are certified by the Executive Director of the Department of Finance and Administration or the Executive Director of the Mississippi Outdoor Stewardship Fund, the board shall be authorized to expend funds from the Mississippi Outdoor Stewardship Trust Fund and shall notify the Lieutenant Governor, Speaker of the House, Chairs of the Senate and House Appropriations Committees, Chairs of the Senate Finance and House Ways and Means Committees, Chairs of the Senate and House Wildlife, Fisheries and Parks Committees, and Legislative Budget Office of such expenditures prior to their distribution to certain projects approved by the board.

HISTORY: Laws, 2022, ch. 487, § 4, eff from and after July 1, 2022.

Editor's Notes — Laws of 2022, ch. 482, § 6, provides:

"SECTION 6. During fiscal year 2023, the State Fiscal Officer shall transfer the sum of Ten Million Dollars ($10,000,000.00) from the State General Fund (Fund No. 2999000000) to the Mississippi Outdoor Stewardship Trust Fund created by House Bill No. 606 [ch. 487], 2022 Regular Session."